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IDAHO CODE

CONTAINING THE

GENERAL LAWS OF IDAHO ANNOTATED

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LAWS 1949, CHAPTER 167 AS AMENDED

Compiled Under the Supervision of the
Idaho Code Commission

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EXECUTIVE SECRETARY

TITLES 58-62

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PUBLISHER'S NOTE

Since the publication in 2002 of the last edition of Replacement Titles 58 to 62, many laws have been amended or repealed and many new laws have been enacted. The resulting increase in the size of the cumulative supplement for the former volume has made it necessary to revise this volume. Accordingly, this new volume with Replacement Titles 58 to 62 is issued with the approval and under the direction of the Idaho Code Commission.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter
Federal Supplement
Federal Reporter
United States Supreme Court Reports, Lawyers' Edition

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first volume of this set

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Article 3, § 22 of the Idaho State Constitution provides: "No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law."

Section 67-510 Idaho Code provides: "No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law."

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage."

This table is given in order that the effective date of acts, not carrying an emergency or which do not specify an effective date, may be determined with a minimum of delay.

Year	Adjournment Date
1921	March 5, 1921
1923	March 9, 1923
1925	March 5, 1925
1927	March 3, 1927
1929	March 7, 1929
1931	March 5, 1931
1931 (E.S.)	March 13, 1931
1933	March 1, 1933
1933 (E.S.)	June 22, 1933
1935	March 8, 1935
1935 (1st E.S.)	March 20, 1935
1935 (2nd E.S.)	July 10, 1935
1935 (3rd E.S.)	July 31, 1936
1937	March 6, 1937
1937 (E.S.)	November 30, 1938
1939	March 2, 1939
1941	March 8, 1941
1943	February 28, 1943
1944 (1st E.S.)	March 1, 1944
1944 (2nd E.S.)	March 4, 1944
1945	March 9, 1945
1946 (1st E.S.)	March 7, 1946
1947	March 7, 1947
1949	March 4, 1949
1950 (E.S.)	February 25, 1950
1951	March 12, 1951
1952 (E.S.)	January 16, 1952

1953	March 6, 1953
1955	March 5, 1955
1957	March 16, 1957
1959	March 9, 1959
1961	March 2, 1961
1961 (1st E.S.)	August 4, 1961
1963	March 19, 1963
1964 (E.S.)	August 1, 1964
1965	March 18, 1965
1965 (1st E.S.)	March 25, 1965
1966 (2nd E.S.)	March 5, 1966
1966 (3rd E.S.)	March 17, 1966
1967	March 31, 1967
1967 (1st E.S.)	June 23, 1967
1968 (2nd E.S.)	February 9, 1968
1969	March 27, 1969
1970	March 7, 1970
1971	March 19, 1971
1971 (E.S.)	April 8, 1971
1972	March 25, 1972
1973	March 13, 1973
1974	March 30, 1974
1975	March 22, 1975
1976	March 19, 1976
1977	March 21, 1977
1978	March 18, 1978
1979	March 26, 1979
1980	March 31, 1980
1981	March 27, 1981
1981 (E.S.)	July 21, 1981
1982	March 24, 1982
1983	April 14, 1983
1983 (E.S.)	May 11, 1983
1984	March 31, 1984
1985	March 13, 1985
1986	March 28, 1986
1987	April 1, 1987
1988	March 31, 1988
1989	March 29, 1989
1990	March 30, 1990
1991	March 30, 1991
1992	April 3, 1992
1992 (E.S.)	July 28, 1992
1993	March 27, 1993
1994	April 1, 1994
1995	March 17, 1995
1996	March 15, 1996
1997	March 19, 1997

1998	March 23, 1998
1999	March 19, 1999
2000	April 5, 2000
2001	March 30, 2001
2002	March 15, 2002
2003	May 3, 2003
2004	March 20, 2004
2005	April 6, 2005
2006	April 11, 2006
2006 (E.S)	August 25, 2006
2007	March 30, 2007
2008	April 2, 2008
2009	May 8, 2009
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012

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TITLE 58

PUBLIC LANDS

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- 58-156. Legislative findings and purposes.

58-101. State land board — Constitution — Department of lands created. — The governor, secretary of state, attorney general, state controller and superintendent of public instruction being constituted a state board of land commissioners by section 7 of article 9, of the Constitution of the state, as such board, have the direction, control and disposition of the public lands of the state. The board shall exercise the said constitutional functions through the instrumentality of a department of lands which is hereby created.

History.

I.C., § 58-101, as added by 1895, p. 215, ch. 2, § 5; reen. 1899, p. 282, ch. 2, § 5; 1905, p. 131, § 30; 1905, p. 131, § 1; compiled R.C.,

§ 1558; compiled and reen. C.L., § 1558; am. 1919, ch. 81, § 1, p. 288; C.S., § 2866; I.C.A., § 56-101; am. 1974, ch. 17, § 39, p. 308; am. 1994, ch. 180, § 118, p. 420.

STATUTORY NOTES**Cross References.**

Attorney general, § 67-1401 et seq.
Office of governor, § 67-802.
Secretary of state, § 67-901 et seq.
Southern Idaho College of Education, title to real estate and personal property of, vested in, § 33-3202.
State controller, § 67-1001 et seq.
Superintendent of public instruction, § 33-102B.

Compiler's Notes.

Legislation prior to the act of 1905, on which this title is primarily based, is 1890-1891, p. 109; 1893, p. 139; 1899, p. 72.

The laws cited to the history of this section prior to 1919 constituted earlier provisions providing for the state agency having charge of public lands.

Session Laws 1919, ch. 8, § 38, p. 43 (§ 67-3401) abolished the office of register of state board of land commissioners and 1919, ch. 81, § 19, p. 288 (§ 58-119), as amended, devolved his functions upon the department of lands except the supervision of public investments, the administration of the Carey Act and the

administration of chapter 26 of title 42 concerning sale of water rights. I.C., § 67-2406, as added by S.L. 1974, ch. 40, § 6, p. 1072 created the director, department of lands and S.L. 1974, ch. 17, § 42 amending 1919, ch. 81, § 5, p. 288 provides that "the department of lands shall have an officer at its head who shall be known as the director, subject to the general regulation and control of the state board of land commissioners" and authorized to "exercise the powers and discharge the duties vested by law in him or in his department."

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 118 of S.L. 1994, ch. 180 became effective January 2, 1995.

JUDICIAL DECISIONS

ANALYSIS

Character of board.
Jurisdiction of board.
Navigable waters.
Public lands.

Character of Board.

Land board is not a court of equity; it is an executive board charged with duties that must be executed in conformity with law. *Balderston v. Brady*, 17 Idaho 567, 107 P. 493 (1910).

State board of land commissioners are the trustees or business managers for state in handling state lands. *Pike v. State Bd. of Land Comm'rs*, 19 Idaho 268, 113 P. 447 (1911).

Board may act only as prescribed by law. *Tobey v. Bridgewood*, 22 Idaho 566, 127 P. 178 (1912), overruled on other grounds, *Idaho-Iowa Lateral & Reservoir Co. v. Fisher*, 27 Idaho 695, 151 P. 998 (1915).

Jurisdiction of Board.

There is nothing in the constitution prohibiting legislature from imposing additional duties on persons who compose this board. *St. Joe Imp. Co. v. Laumierster*, 19 Idaho 66, 112 P. 683 (1910).

Board is a constitutional agency charged with the administration of a public trust and vested with certain discretionary power, in the exercise of which it acts quasi-judicially and, unless it manifestly abuses that discretion, courts will not interfere. *Barber Lumber Co. v. Gifford*, 25 Idaho 654, 139 P. 557 (1914).

Board has jurisdiction only over lands expressly granted by congress and such as are

subject to settlement and sale. *Northern Pac. R.R. v. Hirzel*, 29 Idaho 438, 161 P. 854 (1916).

Control of the beds of navigable streams is under the authority of the state land board and the state board of land commissioners, the bodies having general control over the public lands and navigable waters of the state. *Ritter v. Standal*, 98 Idaho 446, 566 P.2d 769 (1977).

Navigable Waters.

The state of Idaho holds title to the beds of all navigable bodies of water below the natural high water mark for the use and benefit of the public; the power to direct, control and dispose of the public lands is vested in the state board of land commissioners pursuant to this section. *Kootenai Envtl. Alliance, Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 671 P.2d 1085 (1983).

Public Lands.

Term "public lands" does not include beds of navigable waters or lands thereunder below high water mark. *Northern Pac. R.R. v. Hirzel*, 29 Idaho 438, 161 P. 854 (1916).

Cited in: *Twin Falls Salmon River Land & Water Co. v. Alexander*, 260 F. 270 (D. Idaho 1919); *Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261, 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Lands, § 7 et seq.

C.J.S. — 73B C.J.S., Public Lands, § 2 et seq.

58-102. State land board — President — Quorum. — The governor shall be president of the board, but in his absence from any meeting, one (1) of the members may act as president pro tempore, and shall preside at such meeting. A majority of the members of said board shall constitute a quorum for the transaction of business.

History.

1905, p. 131, § 2; reen. R.C. & C.L., § 1559;

am. 1919, ch. 81, § 2, p. 288; C.S., § 2867; I.C.A., § 56-102.

STATUTORY NOTES

Cross References.

Administrative departments responsible to governor alone, § 67-2401 et seq.

JUDICIAL DECISIONS**Capacity of Governor.**

When acting and voting at a meeting of state board of land commissioners and discharging particular and special duties devolving upon board, governor is not acting as chief

executive, but as one of the members of the board in the discharge of certain ministerial and quasi-judicial duties imposed on such board by the constitution and statutes. *Balderston v. Brady*, 17 Idaho 567, 107 P. 493.

58-103. State land board — Meetings — Rules. — The board shall have regular meetings not less frequently than quarterly, and may hold such adjourned or special meetings as the board may direct, and may meet at any time on call of the president or majority of the board. The said board shall cause a complete record of its meetings and other proceedings to be kept. The meetings and proceedings of said board shall be regulated by such rules as the board may adopt.

History.

1905, p. 131, § 3; reen. R.C. & C.L., § 1560;

am. 1919, ch. 81, § 3, p. 288; C.S., § 2868; I.C.A., § 56-103.

58-104. State land board — Powers and duties. — The state board of land commissioners shall have power:

1. To exercise the general direction, control and disposition of the public lands of the state.

2. To appoint its executive officer, the director of the department of lands.

3. To perform legislative functions not inconsistent with law and to delegate to its executive officer and his assistants the execution of all policies adopted by it.

4. To review upon appeal all decisions of the director of the department of lands in contested matters.

5. To determine the policy, direct the work to be undertaken, solicit bids, contract for work to be performed, and appropriate from its funds the money necessary to carry out such work.

6. To prescribe rules, not inconsistent with law, for the government of the department, the conduct of its employees and clerks, the distribution and performance of its business and the custody, use and preservation of the records, papers, books, documents, and property pertaining thereto.

7. To engage in reseedling and reforestation programs on the public lands of the state.

8. To exchange any public lands of the state, over which the board has power of disposition and control for lands of equal value, the title to which, or power of disposition, belongs or is vested in the governing body or board of trustees of any state governmental unit, agency or institution.

9. To regulate and control the use or disposition of lands in the beds of navigable lakes, rivers and streams, to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use; provided, that the board shall take no action in derogation of or seeking to interfere with the riparian or littoral rights of the owners of upland property abutting or adjoining such lands; except that when necessary to provide for the highest and best use of such lands for commercial, navigational, recreational or other public purposes, the board

may acquire the riparian or littoral rights of upland owners by purchase or gift. The term "natural or ordinary high water mark" as herein used shall be defined to be the line which the water impresses on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. Provided that this definition shall not be construed so as to affect or change the vested property rights of either the state of Idaho or of riparian or littoral property owners. Lands lying below the meander line of a lake bed encompassing a national wildlife refuge as established under the authority of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222), as amended, or the Fish and Wildlife Coordination Act (48 Stat. 401), as amended, or the Fish and Wildlife Act of 1956 (70 Stat. 1119), as amended (16 USC 742a through 742i), are not subject to the application of this act.

10. To enter into a joint exercise of powers agreement with the United States forest service in the department of agriculture, pursuant to section 67-2328, Idaho Code.

11. To direct and oversee the conduct and operations of the endowment fund investment board and the Idaho department of lands.

12. To appoint and consult with expert advisors for each critical function for which the state board of land commissioners has responsibility. In this context, the term "expert advisor" shall mean a person engaged in the business for which he holds himself out to be an expert and who is experienced in that field.

13. Strategically plan and establish policies to coordinate the management of state lands with the investment goals of the permanent endowment funds and earnings reserve funds.

14. To provide reports of the status and performance of state endowment lands and the respective endowment funds to the state affairs committees of the senate and the house of representatives within fourteen (14) days after a regular session of the legislature convenes.

15. To make distributions to endowment income funds as provided in section 57-723A, Idaho Code.

History.

1919, ch. 81, § 4, p. 288; C.S., § 2869; I.C.A., § 56-104; am. 1955, ch. 61, § 1, p. 119; am. 1965, ch. 295, § 1, p. 785; am. 1967, ch.

236, § 1, p. 694; am. 1974, ch. 17, § 40, p. 308; am. 1996, ch. 281, § 1, p. 911; am. 1998, ch. 256, § 45, p. 825; am. 2004, ch. 154, § 1, p. 489.

STATUTORY NOTES

Cross References.

Airports, lands reserved for leasing out by state board of land commissioners, §§ 21-604, 21-606.

Appraisement, sale and lease of state lands, § 58-301 et seq.

Department of water resources to exercise certain duties of land board, § 67-3301.

Endowment fund investment board, § 57-718.

Federally granted land, duties in connection with, Idaho Const., Art. IX, § 8.

Forestry Act, authority of state board of land commissioners to make rules and regulations, § 38-132.

Forest, wildlife and range experiment station to conduct cooperative investigation and research with the board of land commissioners, § 38-703.

Funds of land board, duty of state treasurer to receive and receipt and to purchase warrants for use and benefit of, § 67-1202.

Geothermal land leases, authority to execute, § 47-1601 et seq.

Idaho dredge and placer mining protection act, state board of land commissioners administrative agency of, § 47-1316.

Irrigation and drainage districts, approval of release of first mortgage and acceptance of second mortgage, § 43-2003.

Lava Hot Springs, authorization to lease out property, § 67-4406.

Lieu lands, selection, §§ 58-202 to 58-206.

Members and powers of board of state land commission, Idaho Const., Art. IX, § 7.

Mineral lands, royalties and fees, adoption of rules and regulations, § 47-710.

Natural resources protection plan, approval, § 67-5802.

Navigable river beds, lease for mining purposes, §§ 47-714 to 47-717.

Oil and gas lands, cooperation with federal government in development, §§ 47-811, 47-812.

Oil and gas conservation commission, board of land commissioners constitutes, § 47-317.

Oil and gas leases of state and school lands, authority of state board of land commissioners concerning, § 47-801 et seq.

Sale of state lands, §§ 58-313 to 58-323.

Soil conservation districts, protection of public lands, §§ 22-2715 to 22-2727.

Southern Idaho College of Education, leasing or selling real and personal property of, § 33-3202.

State lands adjacent to public airports, authority to sell or lease, §§ 21-511, 21-512.

State mineral lands, certificate of location filed, § 47-703.

Surface mining, administration of governing law, §§ 47-1504 to 47-1515.

Surplus lands, sale, §§ 58-331 to 58-335.

Federal References.

The Migratory Bird Conservation Act of February 18, 1929, referred to in subsection 9, is codified as 16 U.S.C.S. § 715 et seq.

The Fish and Wildlife Coordination Act, referred to in subsection 9, is codified as 16 U.S.C.S. § 661 et seq.

Compiler's Notes.

The term "this act" at the end of subsection 9 refers to S.L. 1967, ch. 236, which is codified as this section.

The references enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 1996, ch. 281 declared an emergency. Approved March 15, 1996.

Section 63 of S.L. 1998, ch. 256 provides "This act [which, in part, amended this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds. Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described. Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies that were required by S.L. 1998, ch. 356, section 63, for the 1998 amendment of this section to become effective on July 1, 2000, were fulfilled.

JUDICIAL DECISIONS

ANALYSIS

Acts beyond authority.

Consent of sovereign.

Evidence.

High water mark.

Navigable waters.

Public trust doctrine.

Acts Beyond Authority.

The state board of land commissioners cannot act beyond its legislative authority; thus, even if the board had intended to grant mineral rights to those who had obtained reinstatement of contracts to purchase school endowment lands, it had no power to do so and the state would not be bound by the negligent or unlawful acts of its officials. *Ehco*

Ranch, Inc. v. State ex rel. Evans, 107 Idaho 808, 693 P.2d 454 (1984).

Consent of Sovereign.

Even if a water license had specifically allowed the defendants to construct a fish pond in a navigable estuary, which it did not, the license would not constitute consent of the sovereign to such construction since an

agency other than the department of water resources had been vested by statute with authority over the bed of the estuary and the department of water resources consequently had no authority to consent to the construction. *Ritter v. Standal*, 98 Idaho 446, 566 P.2d 769 (1977).

Evidence.

The trial court's demarcation of the natural or ordinary high water mark of a portion of a river was supported by the evidence, where the evidence indicated that inundation and water erosion had been severe enough in that area to deprive the soil of its vegetation and destroy its use for agricultural purposes. *Heckman Ranches, Inc. v. State*, 99 Idaho 793, 589 P.2d 540 (1979).

Where the state presented affirmative expert testimony of lines on the soil present at the time of statehood, and plaintiffs presented evidence indicating flooding of homesteaders' lands lacking specific water levels, plaintiffs did not prove by clear and convincing evidence that a specific line was impressed upon the soil at the level they claimed, and the district court's judgment in favor of plaintiffs was reversed. *Erickson v. State*, 132 Idaho 208, 970 P.2d 1 (1998).

High Water Mark.

The natural or ordinary high water mark of a river refers to a line impressed on the soil by the action of the water and contemplates a vegetation test as an aid in determining its location; thus, in this context, whether the soil is valuable for agricultural purposes refers to the existence of vegetation and the soil's suitability for raising agricultural crops, and whether cattle could roam on the soil does not aid in determining the location of the natural or ordinary high water mark. *Heckman Ranches, Inc. v. State*, 99 Idaho 793, 589 P.2d 540 (1979).

The district court applied the correct legal standard in determining the ordinary high water mark (OHWM) when it considered the state's title to the land below the OHWM as it existed at the time of statehood, and the correct definition of the OHWM pursuant to this section. *Erickson v. State*, 132 Idaho 208, 970 P.2d 1 (1998).

In determining a lake's actual high water mark where no evidence can be found which could support a finding of an actual line impressed in the soil on July 3, 1890, the true required finding of fact continues to be simply the "ordinary high water mark," which may be established by evidence that is unrelated to either soil or vegetation. *State Forest Indus., Inc. v. Hayden Lake Watershed Imp. Dist.*, 135 Idaho 316, 17 P.3d 260 (2000).

District court erred when it determined that the ordinary high water mark was 2130 feet above mean sea level since the calcula-

tion was not determined by how often the water dropped or rose or whether there was vegetation at a certain place. The district court should have considered the historical facts of the lake in question. *City of Coeur d'Alene v. Mackin (In re Ownership of Sanders Beach)*, 143 Idaho 443, 147 P.3d 75 (2006).

Navigable Waters.

Subdivision 9 clearly gives the state board of land commissioners, not the department of water resources, the authority to regulate and control the use of the beds of navigable waters. *Ritter v. Standal*, 98 Idaho 446, 566 P.2d 769 (1977).

The state of Idaho holds title to the beds of all navigable bodies of water below the natural high water mark for the use and benefit of the public; the power to direct, control and dispose of the public lands is vested in the state board of land commissioners pursuant to § 58-101. *Kootenai Envtl. Alliance, Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 671 P.2d 1085 (1983).

Public Trust Doctrine.

The department of lands acting as the representative of the state land board has the power to dispose of public lands; this power is not absolute, however, and is subject to the limitations imposed by the public trust doctrine. Mere compliance by the department of lands and the state land board with their legislative authority is not sufficient to determine if their actions comport with the requirements of the public trust doctrine. *Kootenai Envtl. Alliance, Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 671 P.2d 1085 (1983).

Public trust resources may only be alienated or impaired through open and visible actions, where the public is in fact informed of the proposed action and has substantial opportunity to respond to the proposed action before a final decision is made thereon; moreover, decisions made by nonelected agencies rather than by the legislature itself will be subjected to closer scrutiny than will legislative decisionmaking. *Kootenai Envtl. Alliance, Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 671 P.2d 1085 (1983).

Final determination whether the alienation or impairment of a public trust resource violates the public trust doctrine will be made by the judiciary; this means that the court will take a "close look" at the action to determine if it complies with the public trust doctrine and it will not act merely as a rubber stamp for agency or legislative action. In making such a determination the court will examine, among other things, such factors as the degree of effect of the project on public trust uses; the impact of the individual project on the public trust resource; the impact of the individual project when examined cumulatively with ex-

isting impediments to full use of the public trust resource; the impact of the project on the public trust resource when that resource is examined in light of the primary purpose for which the resource is suited; and the degree to which broad public uses are set aside in favor of more limited or private ones. *Kootenai Env'tl. Alliance, Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 671 P.2d 1085 (1983).

Cited in: *West v. Smith*, 95 Idaho 550, 511 P.2d 1326 (1973); *Idaho Forest Indus., Inc. v. Hayden Lake Watershed Imp. Dist.*, 112 Idaho 512, 733 P.2d 733 (1987); *Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261, 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997).

OPINIONS OF ATTORNEY GENERAL

The state land board has a fiduciary responsibility under the public trust doctrine to maintain public access to the submerged lands underlying navigable waterways. Private interests may attempt to claim formerly submerged lands. However, due to the complexity of the legal and factual prerequisites to a claim of title, the board is justified in

requiring compensation in the form of a 25-foot public use right-of-way from the party claiming title. This compensation is a settlement of a disputed boundary and does not constitute the taking of private property for a public purpose. The board is acting in a proprietary capacity in compromising a disputed claim to public trust resources. OAG 07-1.

58-104A. Two division heads — Direction and control — Areas of operation — Qualifications — Applications. — The director shall have power to appoint two (2) division heads who shall be known as administrators, one (1) to handle matters concerning lands, minerals and grazing, and the other to handle matters concerning forestry and fire. The qualifications of the division administrator for forestry and fire shall be graduation from a full four (4) year college course with a bachelor's degree, with a major in forestry including five (5) years of technical experience in the forestry-land management field; or, ten (10) years of successful and progressive technical experience of forestry and land management activities of such a nature as to enable the applicant to perform his duties successfully at the professional level.

History.

I.C., § 58-104A, as added by 1967, ch. 315, § 26, p. 906; am. 1974, ch. 17, § 41, p. 308.

58-105. Director. — The department of lands shall have an officer at its head who shall be known as the director, who shall, subject to the general regulation and control of the state board of land commissioners, exercise the powers and discharge the duties vested by law in him or in his department. The director may administer and certify oaths. With the approval of the state board of land commissioners, the director shall provide for the organization of the department, its subordinate divisions and the administrators thereof, the hiring of assistants, clerks or other professional personnel pursuant to chapter 53, title 67, Idaho Code, and shall apportion the duties between such divisions or personnel as he may deem necessary to the conduct of the business of the department. The director shall promulgate such rules and regulations, subject to the approval of the board of land commissioners, as will assure the effective administration of the department and implementation of the directives of the state board of land commissioners.

History.

1919, ch. 81, § 5, p. 288; C.S., § 2870; I.C.A., § 56-105; am. 1974, ch. 17, § 42, p. 308.

STATUTORY NOTES**Cross References.**

Contested cases, duties of director, § 58-122.

Duties and salary, § 58-124.

Forestry Act, duties of director of department of lands, §§ 38-102 to 38-104.

Forestry Act, duty of director of the department of lands to enforce criminal penalties, § 38-133.

Lease of state land, receipt for by director of department of lands, § 58-304.

Preparation of list of valuable papers of department deposited with state treasurer, § 58-129.

Records of state board of land commissioners, duty to keep, § 58-121.

Reports of director, § 58-114.

58-106. Offices. — The department shall maintain a central office in Ada county. The director may in his discretion and with the approval of the state board of land commissioners, establish and maintain, at places other than the seat of government, branch offices for the conduct of any one (1) or more functions of his department.

History.

1919, ch. 81, § 6, p. 288; C.S., § 2871; I.C.A., § 56-106; am. 1974, ch. 17, § 43, p. 308; am. 2001, ch. 183, § 24, p. 613.

58-107. Seal. — The department shall adopt and keep an official seal.

History.

1919, ch. 81, § 7, p. 288; C.S., § 2872; I.C.A., § 56-107.

58-108. Employees. — The department is empowered to employ necessary employees, and, if the rate of compensation is not otherwise fixed by law, to fix their compensation.

History.

1919, ch. 81, § 8, p. 288; C.S., § 2873; I.C.A., § 56-108.

58-109. Bonds of employees. [Repealed.]

STATUTORY NOTES**Compiler's Notes.**

This section, which comprised 1919, ch. 81, § 9, p. 289; C.S., § 2874; I.C.A., § 56-109,

was repealed by S.L. 1971, ch. 136, § 51, p. 522.

58-110, 58-111. Hours for service — Annual leave. [Repealed.]

STATUTORY NOTES**Compiler's Notes.**

These sections, which comprised 1919, ch. 81, §§ 10, 11, pp. 288, 289; C.S., §§ 2875,

2876; I.C.A., §§ 56-110, 56-111, were repealed by S.L. 1992, ch. 241, § 1.

58-112. Land officials prohibited from buying state lands — Penalties. — The members of the state board of land commissioners, the officers, clerks and employees of the department of lands are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public lands of the state. Any person who violates the provisions of this section is guilty of a misdemeanor and subject to removal from office.

History. I.C.A., § 56-112; am. 1974, ch. 17, § 44, p. 1919, ch. 81, § 12, p. 289; C.S., § 2877; 308.

STATUTORY NOTES

Cross References. State land officials forbidden to file upon
Penalty for misdemeanor when not otherwise provided, § 18-113. Carey Act lands, §§ 42-2015 to 42-2017.

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Lands, § 251.

58-113. Compensation in full for public service. [Repealed.]

STATUTORY NOTES

Compiler's Notes. § 13, p. 288; C.S., § 2878; I.C.A., § 56-113,
This section, which comprised 1919, ch. 81, was repealed by S.L. 1992, ch. 241, § 1.

58-114. Reports. — The director shall annually on or before the first day of December, and at such other times as the governor or the board may require, report in writing to the governor and the board concerning the condition, management and financial transactions of his department.

History. I.C.A., § 56-114; am. 1974, ch. 17, § 45, p. 1919, ch. 81, § 14, p. 288; C.S., § 2879; 308.

58-115. Cooperation with other state departments. — The department of lands shall, so far as practicable, cooperate with the other state departments in the employment of services and the use of quarters and equipment. The director may empower or require an employee of another department, subject to the consent of the superior officer of the employee, to perform any duty which he might require of his own subordinates and may likewise require his subordinates to act for other departments.

History. I.C.A., § 56-115; am. 1974, ch. 17, § 46, p. 1919, ch. 81, § 15, p. 288; C.S., § 2880; 308.

STATUTORY NOTES

Cross References.
Cooperation of departments, § 67-2510.

58-116. Gross receipts payable into treasury. — The gross amount of money received by the department, from whatever source, belonging to or

for the use of the state, shall be paid into the state treasury, without delay, without any deduction on account of salaries, fees, costs, charges, expenses or claim of any description whatever and shall be credited to such fund or funds as are now or may hereafter be designated by law for the deposit thereof. No money belonging to, or for the use of, the state shall be expended or applied by the department except in consequence of an appropriation made by law and upon the warrant of the state controller.

History.

I.C., § 58-116, as added by 1919, ch. 81, § 16, p. 289; C.S., § 2881; I.C.A., § 56-116; am. 1994, ch. 180, § 119, p. 420.

STATUTORY NOTES

Cross References.

Deposit and control of funds, § 58-128.
State controller, § 67-1001 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [Jan-

uary 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 119 of S.L. 1994, ch. 180 became effective January 2, 1995.

OPINIONS OF ATTORNEY GENERAL

Costs associated with the sale of endowment lands may not be deducted from the purchase moneys received by the department of lands. OAG 02-1.

58-117. Requisition to make funds available. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1919, ch. 81, § 17, p. 289; C.S., § 2882; I.C.A., § 56-117, was repealed by S.L. 1974, ch. 17, § 1, p. 308.

58-118. Department successor to abolished offices. — Whenever rights, powers and duties, which have heretofore been vested in or exercised by any officer or board, or any deputy or subordinate officer thereof, are, by this chapter, transferred, either in whole or in part, to be vested in the department created by this chapter, such rights, powers and duties shall be vested in, and shall be exercised by, the department, and every act done in the exercise of such rights, powers and duties shall have the same legal effect as if done by the former office [officer] or board, or any deputy or subordinate officer thereof. Every person shall be subject to the same obligations and duties and shall have the same rights arising from the exercise of such rights, powers and duties as if such rights, powers and duties were exercised by the officer or board, or deputy, or subordinate thereof, designated in the respective laws which are to be administered by the department created by this chapter. Every person shall be subject to the same penalty or penalties, civil or criminal, for failure to perform any such obligation or duty, or for doing a prohibited act, as if such obligation or duty arose from, or such act were prohibited in, the exercise of such right, power or duty by the officer or board, or deputy or subordinate thereof, designated in the respective laws which are to be administered by the department

created by this chapter. Every officer and employee shall, for any offense, be subject to the same penalty or penalties, civil or criminal, as are prescribed by existing law for the same offense by any officer or employee whose powers or duties devolved upon him under this chapter. All books, records, papers, documents, property, real and personal, unexpended appropriations, and pending business in any way pertaining to the rights, powers and duties so transferred to or vested in the department created by this chapter, shall be delivered and transferred to the department succeeding to such rights, powers and duties.

Whenever reports or notices are now required to be made or given, or papers or documents furnished or served by any person to or upon any officer or board, or deputy or subordinate thereof, abolished, or where duties are transferred by this chapter, the same shall be made, given, furnished, or served in the same manner to or upon the department herein created; and every penalty for failure so to do shall continue in effect.

This chapter shall not affect any act done, ratified or confirmed, or any right accrued or established, or any action or proceeding had or commenced in a civil or criminal cause before this chapter takes effect in relation to the matters placed under the jurisdiction of the department herein created; but such actions or proceedings may be prosecuted and continued by the department created herein.

History.

1919, ch. 81, § 18, p. 288; C.S., § 2883;
I.C.A., § 56-118.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in the first sentence of the first paragraph was added by the

compiler to supply the probable intended term.

58-119. Powers of department. — The department of lands shall have power:

1. To exercise, under the general control and supervision of the state board of land commissioners all the rights, powers and duties vested by law in the state board of land commissioners, except the supervision of public investments, the administration of the Carey Act and the administration of chapter 26 of title 42, Idaho Code.

2. To exercise all the rights, powers and duties of the register of the state board of land commissioners except such as have been transferred.

3. To organize a central land records unit within the department for the purpose of establishing and maintaining an inventory and plat of all lands owned, leased, or held in trust by the state or any of its agencies, departments, institutions or instrumentalities, and to require any such agency, department, institution or instrumentality to file with the unit for recordation and platting any instrument by which the state or any such agency, department, institution or instrumentality acquires or disposes of title to real property or an estate therein.

History.

1919, ch. 81, § 19, p. 288; C.S., § 2884; I.C.A., § 56-119; am. 1974, ch. 17, § 47, p. 308.

STATUTORY NOTES**Cross References.**

Forest practices act, duties and powers of department of lands, §§ 38-1305 to 38-1311. Parks, division of parks and recreation in department of land abolished, §§ 67-4226, 67-4227.

JUDICIAL DECISIONS**ANALYSIS**

Jurisdiction of court over state.

Public trust doctrine.

Jurisdiction of Court over State.

In action against state to quiet title to a decreed water right, attorney general had right and authority to file a cross-complaint, and, thereafter, the court had jurisdiction over the state for purposes of granting or denying the relief prayed for by the state in its cross-complaint, regardless of whether plaintiff could sue the state without state's consent. *Howard v. Cook*, 59 Idaho 391, 83 P.2d 208 (1938).

Public Trust Doctrine.

The department of lands acting as the rep-

resentative of the state land board has the power to dispose of public lands; this power is not absolute, however, and is subject to the limitations imposed by the public trust doctrine. Mere compliance by the department of lands and the state land board with their legislative authority is not sufficient to determine if their actions comport with the requirements of the public trust doctrine. *Kootenai Env'tl. Alliance, Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 671 P.2d 1085 (1983).

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Lands, §§ 249, 250.

58-119A. Disclaimers of interest — Reservation of public use rights-of-way. — The department of lands may enter into an agreement with an owner of land adjacent to accreted land along a navigable river for the issuance of a disclaimer of interest as to the accreted land by the state in exchange for a reservation of a public use right-of-way along the navigable river. Any proposed agreement that seeks to reserve a public use right-of-way in excess of, or less than, a width of twenty-five (25) feet shall be approved by the state board of land commissioners prior to finalization of the agreement.

History.

I.C., § 58-119A, as added by 2008, ch. 371, § 1, p. 1017.

58-120. Attorney general to represent state. — The attorney general shall represent or shall cause the state to be properly represented in all suits, actions, contests or controversies relating to or involving state lands or timber, before the several land offices in this state, before the general land office at Washington, D.C., and before the courts of this state and of the United States, and may employ a competent attorney or attorneys for that

purpose, who shall be paid out of the fund provided for the department of lands.

History.

1905, p. 131, § 4; reen. R.C. & C.L., § 1561; C.S., § 2885; I.C.A., § 56-120.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.
Escheat proceedings against electric utility property, § 61-329.

grazing service to form the bureau of land management in 1946. See <http://www.blm.gov>.

Compiler's Notes.

The federal general land office, referred to in this section, merged with the United States

land department of the state was changed to the department of lands on the authority of S.L. 1974, ch. 17, § 39 (§ 58-101) and S.L. 1974, ch. 286, § 1.

JUDICIAL DECISIONS

Jurisdiction of Court over State.

In an action against state to quiet title to a decreed water right, attorney general had right and authority to file a cross-complaint, and, thereafter, the court had jurisdiction over the state for purposes of granting or

denying the relief prayed for by the state in its cross-complaint, regardless of whether plaintiff could sue the state without state's consent. *Howard v. Cook*, 59 Idaho 391, 83 P.2d 208 (1938).

58-121. Records of land board. — It shall be the duty of the director of the department of lands to keep the records of the state board of land commissioners; to make out and countersign all patents and leases issued by the president of the said board to purchasers and lessees of state lands, and to keep a suitable record of the same; to file and preserve the bonds of lessees and those given by purchasers to secure deferred payments; to make and deliver to purchasers suitable certificates of purchase; to have the custody of the seal of the state board of land commissioners; to keep the minutes of the board, and to perform such other duties concerning the land affairs of the state as the board may direct.

History.

1905, p. 131, parts of § 5; am. 1907, p. 312, § 1; reen. R.C., § 1562; am. 1909, p. 79, § 1; am. 1915, ch. 102, § 1, p. 240; compiled and

reen. C.L., § 1562; am. 1919, ch. 8, § 41, p. 66; C.S., § 2886; I.C.A., § 56-121; am. 1974, ch. 17, § 48, p. 308.

58-122. Contested cases — Procedure. — It shall be the duty of the director of the department of lands in any or all contested cases, at the direction of the board, to appoint hearing officers, receive evidence, issue subpoenas and to hold contested case hearings in accordance with sections 67-5240 through 67-5271, Idaho Code, when hearings are necessary and witnesses may be required to be examined. Provided however, that when the state board of land commissioners is exercising its duties and authorities concerning the direction, control or disposition of the public lands of the state pursuant to sections 7 and 8, article IX, of the constitution of the state of Idaho, such actions shall not be considered to be contested cases as defined in subsection (6) of section 67-5201, Idaho Code, and section

67-5240, Idaho Code, unless the board, in its discretion, determines that a contested case hearing would be of assistance to the board in the exercise of its duties and authorities.

History.

1905, p. 131, part of § 5; reen. 1907, p. 312, § 1; reen. R.C., § 1562; reen. 1909, p. 79, § 1; reen. 1915, ch. 102, § 1, p. 240; reen. C.L.,

§ 1562a; C.S., § 2887; I.C.A., § 56-122; am. 1974, ch. 17, § 49, p. 308; am. 2004, ch. 184, § 1, p. 575.

JUDICIAL DECISIONS

Appeal Not Authorized.

Statutes of this state do not authorize an appeal from decision of state board of land

commissioners in a land contest case. *Pierson v. State Bd. of Land Comm'rs*, 14 Idaho 159, 93 P. 775 (1908).

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Lands, § 263.

58-123. Director of department — Statements — Annual reports.

— On the first business day of each quarter the director of the department of lands shall forward to the state controller and treasurer a statement in duplicate of the amount of moneys received and deposited from all sources. Such statement shall show the class and character of the lands sold or leased, and the amounts of moneys received from all other sources; and on or before the first day of December immediately preceding the meeting of the legislature, he shall make a report to the governor of the business of his office, the transactions of the state board of land commissioners and the land, forest and fire affairs of the state, showing, by tables, the land belonging to the several funds of the state, to whom sold, the amount leased, and the receipts from all sources; and said reports shall contain any such other items of information concerning state lands, forests and fires as the state board of land commissioners may deem worthy of publication.

History.

I.C., § 58-123, as added by 1905, p. 131, § 6; reen. R.C. & C.L., § 1563; C.S., § 2888;

I.C.A., § 56-123; am. 1967, ch. 315, § 27, p. 906; am. 1974, ch. 17, § 50, p. 308; am. 1994, ch. 180, § 120, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.
State treasurer, § 67-1201 et seq.

Effective Dates.

Section 29 of S.L. 1967, ch. 315 declared an emergency. Approved April 7, 1967.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and

after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 120 of S.L. 1994, ch. 180 became effective January 2, 1995.

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Lands, § 251.

58-124. Director of department — Assistants — Appointment — Duties — Salary and expenses — Oath and bond — Term of office. —

The state board of land commissioners shall appoint the director of the department who shall have general supervision of all field work, and with such assistants as he, with the approval of the board may appoint, select, locate and appraise all lands which are now, or may be hereafter, granted to this state by the United States for any purpose whatever, and who shall perform the other duties as shall be required of him by the board, or as shall be prescribed by their rules. He shall be paid the salary determined by the board and his actual and necessary expenses while traveling on business of the board. Said director and his assistants shall each take the oath of office and be bonded to the state of Idaho in the time, form and manner prescribed in chapter 8, title 59, Idaho Code. Said assistants shall receive their actual and necessary expenses while traveling on business for the board. The director may employ necessary clerical and other assistants for carrying on the business of the state department of lands and fix their compensation. The director and other appointees of the board shall hold their respective positions during the pleasure of the board.

History.

1905, p. 131, § 8; reen. R.C., § 1564; am. 1909, p. 79, § 2; am. 1913, ch. 94, § 1, p. 383; am. 1915, ch. 121, § 1, p. 266; part of section

transferred to C.L., § 1564a; reen. C.L., § 1564; C.S., § 2889; am. 1921, ch. 86, § 1, p. 163; I.C.A., § 56-124; am. 1971, ch. 136, § 36, p. 522; am. 1974, ch. 17, § 51, p. 308.

STATUTORY NOTES

Cross References.

Creation of office, § 58-105.
Reports to governor and board, § 58-114.
Watershed protection and flood prevention, duties, §§ 42-3602 to 42-3604.

Effective Dates.

Section 87 of S.L. 1971, ch. 136 declared an emergency. Approved March 18, 1971.

JUDICIAL DECISIONS

Lands Within Board's Jurisdiction.

State land board has power, under the constitution and this section, to acquire title to any and all lands which the general government may at any time give or grant to the state, and this is true whether grant be general or special or in lieu of lands lost or otherwise disposed of. *Balderston v. Brady*, 18

Idaho 238, 108 P. 742 (1910). To same effect, *Rogers v. Hawley*, 19 *Idaho* 751, 115 P. 687 (1911).

Board has jurisdiction only over lands expressly granted by congress and such as are subject to settlement and sale. *Northern Pac. R.R. v. Hirzel*, 29 *Idaho* 438, 161 P. 854 (1916).

58-125. Payment of salaries from Carey Act trust fund. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1913, ch. 94, § 1, p. 838; reen. 1915, ch. 121, § 1, p. 266; reen. C.L., § 1564A; am. 1919, ch. 8, § 42, p.

67; C.S., § 2890; I.C.A., § 56-125; am. 1974, ch. 17, § 52, p. 308, was repealed by S.L. 1992, ch. 241, § 1.

58-126. Information regarding state lands. — Information concerning the selection or appraisal of any state lands, or the timber thereon,

or any information in regard to such land shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

History.

1905, p. 131, § 9; compiled and reen. R.C. & C.L., § 1565; C.S., § 2891; I.C.A., § 56-126;

am. 1974, ch. 17, § 53, p. 308; am. 1990, ch. 213, § 88, p. 480.

STATUTORY NOTES

Effective Dates.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through

110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

58-127. Fees. — The board of land commissioners is hereby empowered to set the fees for sales, leases, easements of state land and all other transactions in the department of lands.

All moneys collected for fees shall be paid to the state treasurer and shall be credited to the endowment earnings reserve account for endowment land management, and to the general account [fund] for all other activities unless otherwise provided by law; provided, however, that in all cases where filing or other fees or rent moneys have been paid to the board by two (2) or more applicants for the same lands, such fees, or rent moneys, may be returned to the unsuccessful applicant from any moneys in the possession of the board; provided, that such payments shall be made out of the account to which they may have been credited.

History.

I.C., § 58-127, as added by 1980, ch. 111, § 2, p. 249; am. 2007, ch. 182, § 1, p. 531.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Prior Laws.

Former § 58-127, which comprised S.L. 1905, p. 131, § 7; reen. R.C., § 1566; compiled and reen. C.L., § 1566; C.S., § 2892; I.C.A., § 56-127; am. 1955, ch. 109, § 1, p. 234; am. 1974, ch. 17, § 54, p. 308, was repealed by S.L. 1980, ch. 111, § 1.

Amendments.

The 2007 amendment, by ch. 182, in the

last paragraph, substituted "state treasurer" for "treasurer of the state" and "credited to the endowment earnings reserve account for endowment land management, and to the general account for all other activities unless otherwise provided by law" for "credited to the general account."

Compiler's Notes.

The bracketed insertion in the second paragraph was added by the compiler to correct the name of the referenced fund. See § 67-1205.

58-128. Deposit and control of funds. — The state board of land commissioners shall daily deposit with the state treasurer all money and evidences of indebtedness received by the board. The state board of land commissioners may draw upon funds within their jurisdiction in the hands of the state treasurer for the payment of all expenses and demands in the management, protection and control of the state lands.

History.

1909, p. 360, §§ 1, 3; compiled and reen.
C.L., § 1566a; C.S., § 2893; I.C.A., § 56-128.

STATUTORY NOTES**Cross References.**

Disposition of purchase money from sales, § 58-316.	Duty of treasurer in relation to funds, § 67-1202.
Duty of auditor in relation to funds, § 67-1001.	Gross receipts payable into treasury, § 58-116.
	State treasurer, § 67-1201 et seq.

OPINIONS OF ATTORNEY GENERAL

Costs associated with the sale of endowment lands may not be deducted from the purchase moneys received by the department of lands. OAG 02-1.

58-129. Deposit of papers with state treasurer. — All valuable papers and securities, or any portion thereof, pertaining to the business of the land department, may, by direction of the state board of land commissioners, be deposited with the state treasurer for safekeeping in the fireproof vault and fire and burglar proof safe provided for the treasurer's department. Upon such order being made by the board, the director shall prepare a list of such valuable papers and securities so ordered deposited, in triplicate, and shall take thereon the receipt of the treasurer for such papers and securities, leaving one (1) list with the treasurer, filing one (1) with the state controller and preserving one (1) in the office of the board. For the safekeeping of such papers and securities, and their return to the state board of land commissioners when required at any time, the state treasurer shall be liable on his official bond.

History.

I.C., § 58-129, as added by 1905, p. 131, § 29; compiled and reen. R.C. & C.L., § 1567;	C.S., § 2894; I.C.A., § 56-129; am. 1974, ch. 17, § 55, p. 308; am. 1994, ch. 180, § 121, p. 420.
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STATUTORY NOTES**Cross References.**

State controller, § 67-1001 et seq.
State treasurer, § 67-1201 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [Jan-

uary 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 121 of S.L. 1994, ch. 180 became effective January 2, 1995.

58-130. Audit and payment of expenses. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1905, p. 131, § 26; reen. R.C. & C.L., § 1568; C.S., § 2895;

I.C.A., § 56-130; am. 1974, ch. 17, § 56, p. 308, was repealed by S.L. 1992, ch. 241, § 1.

58-131. Cooperation of state land board in settlement of federal irrigation projects. — The state board of land commissioners of Idaho is hereby authorized to enter into agreements on behalf of the state of Idaho with the secretary of the interior of the United States for the cooperation by the state of Idaho with the United States in securing and selecting settlers and in promoting the settlement and development of irrigation projects, or divisions thereof, where such projects are constructed by the United States under the provisions of the United States Reclamation Act: provided, that no contract shall be entered into hereunder obligating the state of Idaho to pay any money until appropriation therefor has been made by the legislature.

History.

1927, ch. 141, § 1, p. 183; I.C.A., § 56-131.

STATUTORY NOTES

Cross References.

State cooperation with United States reclamation service, § 42-2701 et seq.

generally be found in 43 U.S.C.S. § 371 et seq.

Federal References.

The United States Reclamation Act may

58-132. Extension and declaration of powers and duties of state board of land commissioners. — In order that financial aid cooperation from the federal government, which is now and may hereafter become available may be taken advantage of, and that land in the state of Idaho be put to its best possible use, it shall be the duty of the state board of land commissioners to integrate and unify the policy and administration of land use in the state, and to determine the best use or uses, viewed from the standpoint of general welfare, to be made of state land now owned or hereafter acquired, including the determination of what land should be in county or state or federal ownership, and, in order to carry out the intentions of this chapter, the state board of land commissioners is hereby authorized and directed to classify state owned lands with respect to their value for forestry, reforestation, watershed protection and recreational purposes.

In determining the best use or uses of land, the state board of land commissioners may call upon the Idaho division of tourism and industrial development [department of commerce] and/or other state departments, divisions and agencies for inventories, classifications, maps and other data relative to land, and said Idaho division of tourism and industrial development [department of commerce] and other state departments, divisions and agencies shall furnish the said board with inventories, classifications, maps and other data upon request of the board. Said board may also call upon the boards of county commissioners in counties wherein the lands are situated for advice and recommendations in determination of future use and administration of said lands.

History.

1935 (1st E.S.), ch. 6, § 1, p. 13; am. 1937, ch. 213, § 1, p. 359.

STATUTORY NOTES**Cross References.**

Powers and duties of state board of land commissioners, § 58-104.

Compiler's Notes.

The "state planning board" was changed to "the division of tourism and industrial development" in 1974 on authority of S.L. 1974, ch. 22, § 51, p. 592 (§ 67-4703) and S.L. 1974, ch. 286, § 1. However, the amendment of § 67-4703 by S.L. 1980, ch. 361, § 4, p. 937 substi-

tuted "division of economic and community affairs" for "division of tourism and community development" and the amendment of § 67-4703 by S.L. 1985, ch. 160, § 6, p. 426 substituted "department of commerce" for "division of economic and community affairs". Therefore, the bracketed words "department of commerce" have been inserted by the compiler twice in the first sentence in the second paragraph.

OPINIONS OF ATTORNEY GENERAL

If lands are not currently owned by the state, some parties may assert that the land board, if it acquires such lands, must take them subject to any present zoning restrictions; but the land use decision process in this section and § 58-133 expressly extends to newly acquired lands and the land board is not required to abide by any land-use designation that may have been imposed on such lands prior to their coming into state ownership, but is authorized and directed to deter-

mine the best use of such lands upon their acquisition. OAG 91-3.

Given the specific provisions of this section and § 58-133, and the limited consultation rule specified therein for county commissioners in the assignment of land-use designations to state lands, it can only be concluded that the land board is not bound by the terms of the Local Planning Act and is not required to abide by county zoning ordinances. OAG 91-3.

58-133. Acquisition, sale, lease, exchange or donation of public lands — Creation and operation of land bank fund. — (1) The state board of land commissioners may select and purchase, lease, receive by donation, hold in trust, or in any manner acquire for and in the name of the state of Idaho such tracts or leaseholds of land as it shall deem proper, and after inventory and classification as provided herein, shall determine the best use or uses of said lands: provided, however, that all state-owned lands classified as chiefly valuable for forestry, reforestation, recreation and watershed protection are hereby reserved from sale and set aside as state forests.

(2) The proceeds from the sale of state endowment land may be deposited into a fund which shall be known as the "land bank fund," which is hereby created in the state treasury for the purpose of temporarily holding proceeds from land sales pending the purchase of other land for the benefit of the beneficiaries of the endowment. A record shall be maintained showing separately from each of the respective endowments the moneys received from the sale of endowment lands. Moneys from the sale of lands which are a part of an endowment land grant shall be used only to purchase land for the same endowment.

(3) All moneys deposited in the land bank fund, including earnings on those moneys, are hereby continually appropriated to the state board of land commissioners for the purposes enumerated in this section. The state board of land commissioners may hold proceeds from the sale of land in the land

bank fund for a period not to exceed five (5) years from the effective date of sale. If, by the end of the fifth year, the proceeds from the land sale have not been encumbered to purchase other land within the state, the proceeds shall be deposited in the permanent endowment fund of the respective endowment along with any earnings on the proceeds from the land sale, unless the period is extended by the legislature.

History.

1935 (1st E.S.), ch. 6, § 2, p. 13; am. 1937, ch. 213, § 2, p. 359; am. 1998, ch. 256, § 46, p. 825; am. 2003, ch. 230, § 1, p. 589.

STATUTORY NOTES

Effective Dates.

Section 63 of S.L. 1998, ch. 256 provides "This act [which, in part, amended this section] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of perma-

nent endowment funds. Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described. Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies that were required by S.L. 1998, ch. 356, section 63, for the 1998 amendment of this section to become effective on July 1, 2000, were fulfilled.

OPINIONS OF ATTORNEY GENERAL

If lands are not currently owned by the state, some parties may assert that the land board, if it acquires such lands, must take them subject to any present zoning restrictions; but the land use decision process in § 58-132 and this section expressly extends to newly acquired lands and the land board is not required to abide by any land-use designation that may have been imposed on such lands prior to their coming into state ownership, but is authorized and directed to determine the best use of such lands upon their acquisition. OAG 91-3.

The land board may deposit, in the land bank fund, proceeds from the sale of endowment lands of the following endowments: (1) penitentiary; (2) public school; (3) university; (4) scientific school; (5) agricultural college; (6) normal school; (7) mental hospital; and (8) charitable institutions. OAG 01-4.

When compared with the language of the other endowment statutes, § 67-1610 does not permit the deposit of proceeds from the sale of the lands comprising the capitol permanent endowment into the land bank. OAG 01-4.

Portion of this section which permits the deposit of proceeds from the sale of endowment land into the land bank is not mandatory; the land board has the discretion on a case-by-case basis to determine whether it is appropriate to place any eligible funds into the account. OAG 01-4.

Costs associated with the acquisition of endowment property may be paid for out of the trust res contained in the land bank. OAG 01-4.

Costs associated with the sale of endowment lands may not be deducted from the purchase moneys received by the department of lands. OAG 02-1.

Moneys deposited in the land bank fund, which expressly permits the funds therein to be used for the "purchase" of new endowment land, may be used to pay reasonable and ordinary costs associated with the acquisition of endowment real property — such as appraisal, Level 1 environmental site assessments, timber cruises, and realtor commissions, as well as architecture, engineering and closing costs. OAG 02-1.

58-134. Cooperation in control and administration of state lands — Powers of board of county commissioners. — The state board of land commissioners may cooperate or join with the United States, any corpora-

tion the majority of whose capital stock is owned by the United States, and/or any county or counties of this state in any matter pertaining to the care, control and administration of any land now owned or hereafter acquired by the state, other than endowment lands received from the government of the United States, the United States, any corporation the majority of whose capital stock is owned by the United States, or county, and for such purposes may enter into contracts in writing with such public organization or organizations, as its or their officer or officers of board or boards, and the board of county commissioners of the several counties of the state are hereby authorized and empowered to make such donations of county-owned lands as above provided, and/or sell lands delinquent for taxes to the state for the amount of such delinquent taxes at date of such sale.

History.

1935 (1st E.S.), ch. 6, § 3, p. 13; am. 1937, ch. 213, § 3, p. 359.

58-135. Sale, lease or donation of state lands to United States. —

The state board of land commissioners shall have authority to grant an option to purchase, contract to sell, sell and convey, donate or lease to the United States, any corporation the majority of whose capital stock is owned by the United States, or any county or city in Idaho, any lands now owned or hereafter acquired by the state, other than endowment lands received from the government of the United States, for such price and/or on such terms as said board may deem to be for the best interest of the state.

The board shall be authorized to receive as partial or full consideration for any sale or conveyance hereunder, any real property or stumpage at a value to be determined by the board.

History.

1935 (1st E.S.), ch. 6, § 4, p. 13; am. 1974, ch. 294, § 1, p. 1748.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1974, ch. 294 declared an emergency. Approved April 5, 1974.

RESEARCH REFERENCES

Am. Jur. — 63A Am. Jur. 2d, Public Lands, § 120.

58-136. Holding in trust money or lands donated. — The state board of land commissioners shall have authority to receive and to hold in trust any money or lands donated, bequeathed, or devised and to carry out the terms, if any, of such donation, bequest or devise, or, in the absence of such terms or conditions, expend, use and administer the same as it may deem advisable in the public interest.

History.

1935 (1st E.S.), ch. 6, § 5, p. 13.

STATUTORY NOTES**Compiler's Notes.**

Section 6 of S.L. 1935 (1st E.S.), ch. 6 read: "Should any part of this act be declared unconstitutional or invalid by a court of compe-

tent jurisdiction, it shall not affect the validity of the remainder of the act, but the act shall be construed as though that part were not incorporated therein."

58-137. Reimbursement of United States for expense of emergency conservation work upon derivation of profit from such work by sale of land or products. [Repealed.]

STATUTORY NOTES**Compiler's Notes.**

This section, which comprised 1935 (1st

E.S.) ch. 1, § 1, p. 5, was repealed by S.L. 1992, ch. 241, § 1.

58-138. Exchange of state land. — (1) The state board of land commissioners may at its discretion, when in the state's best interest, exchange, and do all things necessary to exchange fee simple title to include full surface and mineral rights, to any of the state lands now or hereafter held and owned by this state for similar lands of equal value public or private, so as to consolidate state lands or aid the state in the control and management or use of state lands.

(2) Provided further the state board of land commissioners may, in its discretion, hereafter grant and receive less than fee simple title, and grant or allow such reservations, restrictions, easements or such other impairment to title as may be in the state's best interest.

(3) No exchanges shall be made involving leased lands except upon the written agreement of the lessee.

(4) Subject to the approval of the state board of land commissioners, the first lease on lands acquired through land exchange and in lieu selections shall be offered to the present user, lessee, or permittee of the land, provided that the present user agrees in writing to enter into a contractual management program through which the resource values of the land may be enhanced or improved for the purpose of increasing the income to the endowed institutions.

History.

I.C., § 58-138, as added by 1963, ch. 147, § 1, p. 431; am. 1971, ch. 161, § 1, p. 780; am.

1979, ch. 191, § 1, p. 554; am. 1980, ch. 353, § 1, p. 915; am. 1992, ch. 226, § 2, p. 676.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 1971, ch. 161 declared an emergency. Approved March 20, 1971.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Lands, §§ 48 et seq. 122, 138.

58-139. Exchange of Farragut Naval Training and Distribution Center. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 58-

139, as added by 1965, ch. 67, § 1, p. 106, was repealed by S.L. 1992, ch. 241, § 1.

58-140. Special account for the maintenance, management and protection of state owned timber and leased lands. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1969, ch. 219, § 2, p. 714; am. 1981, ch. 309, § 19, p.

634; am. 1993, ch. 28, § 1, p. 96, was continually repealed by S.L. 1998, ch. 256, § 47, effective July 1, 2000.

58-141. Revolving fund for planning and development of sewage collection and disposal facilities for state lands — Appropriation. — All moneys received by the state of Idaho from the United States of America, its agencies, boards, departments, bureaus and commissions for planning and development of sewage collection and disposal facilities for state lands, all moneys received by the state of Idaho from units of local governments as a reimbursement for funds advanced by the state for planning and development of sewage collection and disposal facilities for state lands and those moneys received by the state of Idaho from users of state planned, developed and operated sewage collection and disposal systems as their proportionate share of planning and development of sewage collection and disposal facilities for state lands shall constitute a revolving fund, which fund is hereby created. All moneys in the fund are hereby appropriated continually to the state board of land commissioners for planning and development of sewage collection and disposal facilities for state lands.

History.

I.C., § 58-141, as added by 1971, ch. 162, § 1, p. 781; am. 1973, ch. 65, § 1, p. 110.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 1971, ch. 162 declared an emergency. Approved March 20, 1971.

58-141A. Revolving fund for water and sewer district — Appropriation. — All moneys received by the state of Idaho pursuant to the provisions of section 58-304A, Idaho Code, representing reimbursement of

unpaid connection fees or charges, monthly rates, tolls or charges, or special benefits payments due water and sewer districts by cottage site lessees pursuant to the provisions of section 39-3609 [39-3635], Idaho Code, shall constitute a revolving fund, which fund is hereby created. All moneys in the fund are hereby appropriated continually to the state board of land commissioners to be used for the reimbursement of water and sewer districts of amounts of unpaid connection fees or charges, monthly rates, tolls or charges, and special benefits payments attributable to cottage site leases which were forfeited as provided in section 39-3610 [39-3636], Idaho Code.

History.

I.C., § 58-141A, as added by 1979, ch. 100,
§ 3, p. 241.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertions in this section were added by the compiler as §§ 33-3609 and 39-3610 were amended and redesignated as §§ 39-3635 and 39-3636 by S.L. 1995, ch. 352, §§ 19 and 20, effective July 1, 1995.

Effective Dates.

Section 5 of S.L. 1979, ch. 100 declared an emergency. Approved March 20, 1979.

58-142. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 58-142 was amended and reded-

ignated as § 58-1301 by § 1 of S.L. 1990, ch. 362.

58-143. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 58-143 was amended and reded-

ignated as § 58-1302 by § 2 of S.L. 1990, ch. 362.

58-144. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 58-144 was amended and reded-

ignated as § 58-1303 by § 3 of S.L. 1990, ch. 362.

58-145. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 58-145 was amended and reded-

ignated as § 58-1304 by § 4 of S.L. 1990, ch. 362.

58-153. [Amended and Redesignated.]**STATUTORY NOTES****Compiler's Notes.**

Former § 58-153 was amended and redes-

igned as § 58-1312 by § 12 of S.L. 1990, ch. 362.

58-154. Sale and lease of state land — Timber — Minerals — Other interests — Interference with application, auction or bid process — Penalty. — It shall be unlawful for any person, firm, partnership, or corporation to offer to accept, or to accept, compensation of any type in exchange for the withdrawal of a bid, or for the withdrawal of an application to bid, lease, or purchase, any state owned land, or timber, minerals, or other interest, or for foregoing [forgoing] a right to bid at any auction for the sale or lease thereof. Further, it shall be unlawful for any person, firm, partnership or corporation to offer to pay, or to pay, compensation of any type in exchange for the withdrawal of a bid, or for the withdrawal of an application to bid, lease, or purchase, any state owned land or timber, minerals, or other interest, or to cause or attempt to cause, another person, firm, partnership or corporation to forego [forgo] a right to bid at any auction for the sale or lease thereof.

Every person, firm, partnership or corporation violating the provisions of this section shall be guilty of an offense against the state. Such an offense shall be punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment in the county jail for not less than three (3) months nor more than one (1) year, or by imprisonment in the state penitentiary for a period not exceeding three (3) years, or by a fine not exceeding one thousand dollars (\$1,000).

History.

I.C., § 58-154, as added by 1974, ch. 254,
§ 1, p. 1664.

STATUTORY NOTES**Compiler's Notes.**

The bracketed insertions in the first paragraph were added by the compiler to provide the probable intended terms.

Effective Dates.

Section 2 of S.L. 1974, ch. 254 declared an emergency. Approved April 5, 1974.

RESEARCH REFERENCES

Am. Jur. — 53A Am. Jur. 2d, Mines and Minerals, §§ 31 to 35.

63C Am. Jur. 2d, Public Lands, § 40 et seq.

58-155. Pest control on state lands — Deficiency warrants. — Whenever the director of the state department of agriculture determines that there exists the threat of an infestation of grasshoppers, crickets or other similar pests on state-owned land and that the infestation is of such a character as to be a menace to state and adjacent private rangeland or agricultural land, the director of the state department of agriculture may

declare the existence of a zone of infestation, and may declare and fix the boundaries so as to definitely describe and identify the zone of infestation.

Thereupon, the state director of the department of lands or his agent shall have the power to go upon the state-owned land within the zone of infestation and shall cause the insect infestation to be suppressed and eradicated in the manner approved by the state board of land commissioners, using such funds as have been appropriated or may hereafter be made available for such purposes; provided, that whenever the cost of suppression and eradication of grasshoppers, crickets or other similar pests on state-owned lands exceeds the funds appropriated or otherwise available for that purpose, the state board of land commissioners may authorize the issuance of deficiency warrants against the general account [fund] for up to fifty thousand dollars (\$50,000) in any one (1) year for such suppression and eradication. The director of the department of lands, in executing the provisions of this chapter insofar as it relates to state-owned lands, shall have the authority to cooperate with federal, county, municipal and private landowners in insect suppression and eradication projects; provided, that the state funds shall only be used to pay the state's pro rata share based on acreage of state-owned lands treated. Such moneys as the state shall thus become liable for shall be paid as a part of the expenses of the state board of land commissioners out of appropriations which shall be made by the legislature for that purpose.

History.

I.C., § 58-155, as added by 1985, ch. 187,
§ 1, p. 483.

STATUTORY NOTES

Cross References.

Director of department of agriculture, § 22-103.

added by the compiler to correct the name of the referenced fund. See § 67-1205.

Compiler's Notes.

The bracketed insertion near the end of the first sentence in the second paragraph was

Effective Dates.

Section 2 of S.L. 1985, ch. 187 declared an emergency. Approved March 21, 1985.

58-156. Legislative findings and purposes. — The legislature of the state of Idaho finds:

(1) That the following described tracts of public school endowment land, containing nineteen and twenty-seven one-hundredths (19.27) acres of endowment land, more or less, managed by the state board of land commissioners, are located adjacent to the Idaho State University/University of Idaho Center for Higher Education in Idaho Falls, Idaho, in Township 2 North, Range 37 East, B.M., Bonneville County:

(a) Lot 9, Pt. NW1/4 NE1/4, Pt. NE1/4 NW1/4, containing six and four-tenths (6.4) acres;

(b) Lot 10, Pt. SW1/4 NE1/4, Pt. SE1/4 NW1/4, containing twelve and eighty-seven one-hundredths (12.87) acres.

(2) That Idaho State University and the University of Idaho, their respective foundations, and the state board of education own and manage the Center for Higher Education in Idaho Falls, Idaho, and the state board

of education has expressed its desire to obtain and manage the described parcels of endowment land as part of the Center for Higher Education in Idaho Falls, Idaho;

(3) That the endowment lands are held in trust by the state board of land commissioners and are managed to generate the maximum long-term financial returns to the public school endowment;

(4) That any transaction in which the state board of education acquires title to these endowment lands, the state board of land commissioners shall receive title to real property of equivalent market value through land exchange;

(5) That the legislature approves of a course of action by which the state board of education on behalf of Idaho State University and the University of Idaho acquires the described endowment lands now owned by the state board of land commissioners, through land exchange at not less than fair market value, as determined by qualified appraisals;

(6) That the state board of education and the state board of land commissioners have agreed to enter into a contract by which the state board of education may acquire the described endowment lands, through land exchange at not less than fair market value, as determined by qualified appraisals;

(7) That any acquisition by the state board of education of title to the described endowment lands shall be subject to any outstanding rights and reservations of record, and the state board of education shall pay all costs of the transactions including, but not limited to, surveys and appraisals.

(8) It is the intent of the legislature to provide funds for this exchange to the state board of education within the state board of education's general fund appropriation for fiscal year 2002, to facilitate the state board of education, on behalf of Idaho State University and the University of Idaho, to purchase real property of equivalent market value and to enter into a land exchange with the state board of land commissioners to acquire the nineteen and twenty-seven one-hundredths (19.27) acres, more or less, of endowment lands.

History.

I.C., § 58-156, as added by 2001, ch. 351,
§ 1, p. 1232.

STATUTORY NOTES**Cross References.**

Public school endowment fund, § 33-902.
State board of education, § 33-101 et seq.

tion in Idaho Falls, see <http://www.isu.edu/isutour/build-descripifche.html>.

Compiler's Notes.

For more on the Center for Higher Educa-

CHAPTER 2

INDEMNITY LIEU LAND SELECTIONS

SECTION.

- 58-201. Acceptance of federal lieu land selection grant.
- 58-202. Lieu selections for school lands sold prior to admission.
- 58-203. Lieu selections for school lands homesteaded.

SECTION.

- 58-204. Lieu selections for school lands in reserves.
- 58-205. Lieu selections for lost school lands.
- 58-205A. Additional school lands.
- 58-206. Prior relinquishments validated.

58-201. Acceptance of federal lieu land selection grant. — The state of Idaho hereby accepts the provisions of sections 2275 and 2276 of the Revised Statutes of the United States as amended by an act of congress February 28, 1891 (26 St. L. 796), and the rights and privileges granted to states and territories by said act.

History.

1911, ch. 39, § 1, p. 85; am. C.L. 120:1; C.S., § 2896; I.C.A., § 56-201.

STATUTORY NOTES

Federal References.

Sections 2275 and 2276 of Revised Statutes of the United States as amended by August 27, 1958, P.L. 85-771, §§ 1, 2, 72 Stat. 928; Sept. 14, 1960, P.L. 86-786, §§ 1, 2, 74 Stat. 1024; and June 24, 1966, P.L. 89-470, §§ 1, 2, 80 Stat. 220 may be found in 43 U.S.C.S. §§ 851, 852.

The sections as amended by an act of congress February 28, 1891 (26 St. L. 796) read:

"Section 2275. Where settlements with a view to preemption or homestead have been, or shall hereafter be made, before the survey of the lands in the field, which are found to have been made on sections 16 or 36, those sections shall be subject to the claims of such settlers; and if such sections, or either of them, have been or shall be granted, reserved, or pledged for the use of schools or colleges in the state or territory in which they lie, other lands of equal acreage are hereby appropriated and granted, and may be selected by said state or territory, in lieu of such as may be thus taken by preemption or homestead settlers. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said state or territory where sections 16 or 36 are mineral land, or are included within any Indian, military or other reservation, or are otherwise disposed of by the United States: provided, where any state is entitled to said sections 16 and 36, or where said sections are reserved to any territory, notwithstanding the same may be mineral land or embraced within a military, Indian or other reservation, the selection of

such lands in lieu thereof by said state or territory shall be a waiver of its right to said sections. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said state or territory to compensate deficiencies for school purposes, where sections 16 or 36 are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever. And it shall be the duty of the secretary of the interior, without awaiting the extension of the public surveys, to ascertain and determine by protraction or otherwise, the number of townships that will be included within such Indian, military, or other reservations, and thereupon the state or territory shall be entitled to select indemnity lands to the extent of two sections for each of said townships in lieu of sections 16 and 36 therein; but such selections may not be made within the boundaries of said reservations: provided, however, that nothing herein contained shall prevent any state or territory from awaiting the extinguishment of any such military, Indian or other reservation and the restoration of the lands therein embraced to the public domain and then taking the sections 16 and 36 in place therein; but nothing in this proviso shall be construed as conferring any right not now existing.

"Section 2276. The lands appropriated by the preceding section shall be selected from any unappropriated, surveyed public land, not mineral in character, within the state or territory where such losses or deficiencies of

school sections occur; and where the selections are to compensate for deficiencies of school lands in fractional townships, such selections shall be made in accordance with the following principles of adjustment, to wit: For each township or fractional township, containing a greater quantity of land than three quarters of an entire township, one section; for a fractional township, containing a greater quantity of land than one quarter, and not more than three quarters of a township, three quarters of a section; for a fractional township, containing a greater quan-

tity of land than one quarter, and not more than one half of a township, one half section; and for a fractional township containing a greater quantity of land than one entire section, and not more than one quarter of a township, one quarter section of land: provided, that the states or territories which are or shall be entitled to both the sixteenth and thirty-sixth sections in place, shall have the right to select double the amounts named, to compensate for deficiencies of school land in fractional townships."

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Construction.
Statutes permissive.

Constitutionality.

The two acts compiled in this chapter are a valid and constitutional exercise of the authority conferred on legislature to regulate and prescribe by law the manner and method by which land board may exercise the constitutional powers conferred on such board, whereby it is given the "direction, control and disposition of the public lands of the state," and is commanded "to provide for the location, protection, sale or rental of all lands heretofore or which may hereafter be granted to the state." *Rogers v. Hawley*, 19 Idaho 751, 115 P. 687 (1911).

Construction.

The acts authorize not a sale but a simple exchange of lands whereby the state may

procure an equivalent area of land to which it can obtain immediate possession. *Rogers v. Hawley*, 19 Idaho 751, 115 P. 687 (1911).

As the law now stands, it is purely a matter of policy and business expediency on the part of land board as to whether or not it will make any relinquishments or exchange any of these unsurveyed school sections for other lands. With these questions of policy and proprietary interest the courts have nothing to do. *Rogers v. Hawley*, 19 Idaho 751, 115 P. 687 (1911).

Statutes Permissive.

Sections 2275 and 2276 of Revised Statutes of the United States are permissive and not mandatory. *Newton v. State Bd. of Land Comm'rs*, 37 Idaho 58, 219 P. 1053 (1923).

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Lands, §§ 137 to 139.

58-202. Lieu selections for school lands sold prior to admission.

— The state board of land commissioners is authorized, empowered and directed to judiciously ascertain and locate the general grants of land made by congress to the state of Idaho and when said board shall find that sections 16 and 36, or any part or parts thereof, in every township of the state were sold or otherwise disposed of by or under the authority of any act of congress prior to July 3, 1890, on the admission of the state of Idaho into the union, then the said board shall by and with the approval of the secretary of the interior or the secretary of agriculture, when necessary, select from the surveyed, unreserved and unappropriated lands of the United States within the limits of the state of Idaho, other lands equivalent thereto in area and value, in legal subdivisions of not less than one-quarter (1/4) section.

History.

1911, ch. 6, § 1, p. 16; reen. C.L. 120:2; C.S., § 2897; I.C.A., § 56-202; am. 1974, ch. 235, § 1, p. 1598.

STATUTORY NOTES**Compiler's Notes.**

See notes, § 58-201. *Rogers v. Hawley*, 19 Idaho 751, 115 P. 687 (1911).

Effective Dates.

Section 2 of S.L. 1974, ch. 235 declared an emergency. Approved April 3, 1974.

JUDICIAL DECISIONS**Exchange of School Lands.**

State board of land commissioners is without authority to dispose of lands granted under Idaho Admission Bill (Idaho Code, vol.

1, pp. 509 to 516) for educational purposes in exchange for other lands. *Newton v. State Bd. of Land Comm'rs*, 37 Idaho 58, 219 P. 1053 (1923).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Lands, §§ 60, 62, 63, 135.

C.J.S. — 73A C.J.S., Public Lands, §§ 112 to 114.

58-203. Lieu selections for school lands homesteaded. — When the state board of land commissioners shall ascertain that sections 16 and 36 or any part thereof granted to the state have been actually settled upon prior to the survey thereof by the general government, and are occupied by bona fide settlers, claiming title thereto under the homestead laws of the United States, then the said board shall be and is hereby authorized and empowered, in its discretion, by and with the approval of the secretary of the interior, or the secretary of agriculture when necessary, to select from the surveyed, unreserved and unappropriated public lands of the United States within the state of Idaho, other lands equivalent in area and value, in legal subdivisions, and as contiguous as may be to the section in lieu of which the same is taken.

History.

1911, ch. 6, § 2, p. 16; reen. C.L. 120:3; C.S., § 2898; I.C.A., § 56-203.

STATUTORY NOTES**Compiler's Notes.**

See notes, § 58-201. *Rogers v. Hawley*, 19 Idaho 751, 115 P. 687 (1911). See note, § 58-

202. *Newton v. State Bd. of Land Comm'rs*, 37 Idaho 58, 219 P. 1053 (1923).

RESEARCH REFERENCES

C.J.S. — 73A C.J.S., Public Lands, §§ 115 to 118.

58-204. Lieu selections for school lands in reserves. — When the state board of land commissioners shall ascertain that sections 16 and 36 or any part or parts thereof, granted to the state are or have been lawfully included and embraced within any forest or other reservation established under or by authority of any act of congress, then the said board shall, by

and with the approval of the secretary of the interior, or the secretary of agriculture when necessary, select from the surveyed, unreserved and unappropriated public lands of the United States, within the limits of the state of Idaho, other lands equivalent thereto in area and value in legal subdivisions and as contiguous as may be to the section in lieu of which the same is taken: provided, that if the board shall upon examination or otherwise determine that any lands owned by the state in such forest or other reservation borders on or in the vicinity of any lake, waterfall, spring or other naturally advantageous site, or any natural curiosity, or that for any other cause said lands are, or, in the future, may have particular value to the state, then the board shall not certify such lands to the secretary of the interior as a basis for indemnity selections in lieu thereof but the state of Idaho shall retain its title to said lands.

History.

1911, ch. 6, § 3, p. 17; reen. C.L. 120:4; C.S., § 2899; I.C.A., § 56-204.

STATUTORY NOTES

Compiler's Notes.

See notes, § 58-201. Rogers v. Hawley, 19 Idaho 751, 115 P. 687 (1911). See note, § 58-

202. Newton v. State Bd. of Land Comm'rs, 37 Idaho 58, 219 P. 1053 (1923).

RESEARCH REFERENCES

C.J.S. — 73A C.J.S., Public Lands, §§ 115 to 118.

58-205. Lieu selections for lost school lands. — When the state board of land commissioners ascertain that what would be, if surveyed, sections 16 and 36, or any part or parts thereof, granted to the state, fall upon any lake or navigable river and that the quantity of land intended to be conveyed as sections 16 and 36 is lost to the state thereby, it shall be the duty of said board to apply to the secretary of the interior for permission to select indemnity lands in lieu of the loss in quantity so sustained by the state.

History.

1911, ch. 6, § 4, p. 17; reen. C.L. 120:5; C.S., § 2900; I.C.A., § 56-205.

STATUTORY NOTES

Compiler's Notes.

See notes, § 58-201. Rogers v. Hawley, 19 Idaho 751, 115 P. 687 (1911). See note, § 58-

202. Newton v. State Bd. of Land Comm'rs, 37 Idaho 58, 219 P. 1053 (1923).

JUDICIAL DECISIONS

Federal Determination of Loss.

Question as to when a school section has been lost, so far as the state is concerned, is

one to be determined by the government in every case where the state makes application for lieu lands to reimburse such loss.

Balderston v. Brady, 18 Idaho 238; 108 P. 742 (1910).

RESEARCH REFERENCES

C.J.S. — 73A C.J.S., Public Lands, §§ 115 to 118.

58-205A. Additional school lands. — All lands, title to which is acquired by the state by escheat shall be held and treated as school lands, and may be sold and disposed of in the same manner. Said lands shall be under the charge and control of the state board of land commissioners.

History.

I.C., § 58-205A, as added by 1963, ch. 153, § 1, p. 454.

STATUTORY NOTES

Cross References.

Disposition of surplus property, exemption from, § 58-335.

Grazing land, authorized, § 47-806.

Minimum sale price, Idaho Const., Art. IX, § 8; § 58-313.

Oil and gas leases, authorized, § 47-801.

Proceeds part of school fund, Idaho Const., Art. IX, § 4.

Effective Dates.

Section 2 of S.L. 1963, ch. 153 provided that the act should take effect from and after July 1, 1963.

RESEARCH REFERENCES

C.J.S. — 73A C.J.S., Public Lands, §§ 134, 135.

58-206. Prior relinquishments validated. — All relinquishments of state lands in place heretofore lawfully made by the state board of land commissioners as a basis for the selection of indemnity lands in lieu thereof, and all selections of indemnity lands in lieu of lands so relinquished by the state board of land commissioners are hereby ratified, approved, adopted and confirmed by the state of Idaho as of the date of such relinquishments and selections.

History.

1911, ch. 6, § 5, p. 17; am. 1911, ch. 39, § 2,

p. 85; reen. C.L. 120:6; C.S., § 2901; I.C.A., § 56-206.

STATUTORY NOTES

Compiler's Notes.

See note, § 58-202. Newton v. State Bd. of

Land Comm'rs, 37 Idaho 58, 219 P. 1053 (1923).

JUDICIAL DECISIONS

Curative Act Valid.

Legislature, acting for and on behalf of state as representative of the people, has the right to approve and ratify this action of state land board in a transaction wherein legisla-

ture would have had, in the first place, power to authorize the doing of the thing which land board has done, and which it is proposed to ratify, adopt and confirm, even though the act when performed by land board was without

and in excess of the powers then conferred on such board. *Rogers v. Hawley*, 19 Idaho 751, 115 P. 687 (1911).

DECISIONS UNDER PRIOR LAW

Consideration.

The state land board has no authority to relinquish the state's right to sections 16 and 36, except for the minimum consideration or

more authorized by the constitution. *Balderston v. Brady*, 17 Idaho 567, 107 P. 493, motion to modify denied, 18 Idaho 238, 108 P. 742 (1910).

CHAPTER 3

APPRAISEMENT, LEASE, AND SALE OF LANDS

SECTION.

- 58-301. Appraisalment — Fee — Reappraisalment — Appropriation for appraisalment.
- 58-302. Grazing management plans.
- 58-303. Duplicate abstracts to be sent to county treasurer. [Repealed.]
- 58-304. Leases.
- 58-304A. Forfeiture of cottage site leases — New leases — Collections — Disposition.
- 58-305. Payment of rental in advance — Extension of time — Adjustment of competitive bid rental rates.
- 58-306. Notice of lien for rent.
- 58-307. Term of lease — Application for renewal — Allowance for improvements.
- 58-308. Improvements — Filing of receipt for payment — Mistake and fraud.
- 58-309. Bond of lessee — Penalty.
- 58-310. Two or more applicants for same land — Auction of lease.
- 58-310A. Legislative findings and purposes — Leases of single family, recreational cottage sites and homesites not subject to conflict application and auction provisions.
- 58-310B. Two or more applicants for same land — Auction of lease.
- 58-311. Leases of mineral springs.
- 58-312. Occupation of land without lease — Penalty — Suit for civil damages.
- 58-313. Sale of state land.

SECTION.

- 58-313(a). [Amended and Redesignated.]
- 58-313A. Notice to commissioners of county — Objection by commissioners or person aggrieved.
- 58-314. Place and terms of sale — Cash sales — Noxious weed districts.
- 58-315. Stump lands. [Repealed.]
- 58-316. Forfeiture of rights of delinquent purchaser — Reinstatement — Disposition of purchase money.
- 58-317. Sales of less than legal subdivisions.
- 58-318. Supplying lost certificates.
- 58-319. Land board to determine validity of claims.
- 58-320. Lands exempt from taxation.
- 58-321. Rebates of unearned interest on certificates of sale.
- 58-322. Rebates of erroneous payments of principal or interest.
- 58-323. Unearned interest — Certificate of rebate — Allowance and payment.
- 58-324 — 58-329. [Repealed.]
- 58-330. Integrated property records system. [Repealed.]
- 58-331. Designation of surplus real property.
- 58-332. Disposal of surplus real property.
- 58-333. Disposition of proceeds of sale.
- 58-334. Costs of sale and transfer.
- 58-335. Lands exempt from act.
- 58-335A. Other lands exempt from act.
- 58-335B. Governor's housing committee lands exempt from act.
- 58-336. State lands — Assessment for local benefits.
- 58-337. Lease of old penitentiary site.

58-301. Appraisalment — Fee — Reappraisalment — Appropriation for appraisalment. — The board may cause all lands belonging to the state to be appraised, at such times, in such manner and by such means as the board shall decide, and may require the actual cost of an appraisal to be collected from the purchaser at the time of the sale, in addition to the sum bid for the land. All appraisements are under the control of the board, which

may approve or disapprove of the same, in whole or in part, and may, at any time, direct a reappraisal or new appraisal to be made: provided further, that the board may require the person or persons seeking such land to be appraised to pay such fee in advance; and when the land shall be thereafter sold, if the purchaser be other than the party seeking such appraisal the sum or sums or the due proportion thereof so advanced by the party seeking such appraisal shall be returned to the party paying the same.

History.

1905, p. 131, § 10; reen. R.C. & C.L., § 1569; C.S., § 2902; am. 1921, ch. 19, § 1, p.

28; I.C.A., § 56-301; am. 1986, ch. 114, § 1, p. 306; am. 1992, ch. 241, § 2, p. 713.

STATUTORY NOTES

Cross References.

Purchase of state lands by irrigation districts, § 43-1601 et seq.

Sale or lease of state mineral lands, § 47-701 et seq.

Effective Dates.

Section 2 of S.L. 1921, ch. 19 declared an emergency. Approved February 16, 1921.

JUDICIAL DECISIONS

Cited in: *Hammond v. Alexander*, 31 Idaho 791, 177 P. 400 (1918).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Lands, § 64 et seq.

58-302. Grazing management plans. — (1) As used in this section, "grazing management plan" means a written agreement between the lessee and the department of lands, or between the lessee and another public agency and approved by the department, designed to meet the resource objectives identified by the department, including any criteria provided by the department in rule.

(2) All applicants for state grazing leases shall submit a grazing management proposal that addresses resource concerns, as identified by the department, no later than the deadline to apply for the lease.

(3) Provided however, a current lessee with a grazing management plan in place is not required to submit a grazing management proposal pursuant to this section unless:

- (a) The department of lands makes a written request for a new grazing management proposal from the current lessee; or
- (b) The current lessee desires to modify the existing grazing management plan, in which case a written request with the modified management proposal must be submitted no later than the deadline to apply for the lease.

History.

I.C., § 58-302, as added by 2012, ch. 256,
§ 1, p. 708.

STATUTORY NOTES

Cross References.

Department of lands, § 58-101 et seq.

131, § 11; reen. R.C. & C.L., § 1570; C.S.,
§ 2903; I.C.A., § 56-302, was repealed by S.L.
1992, ch. 241, § 1, effective July 1, 1992.

Prior Laws.

Former § 58-302, which comprised 1905, p.

58-303. Duplicate abstracts to be sent to county treasurer. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1905, p. 131,
§ 12; reen. R.C. & C.L., § 1571; C.S., § 2904;

I.C.A., § 56-303; am. 1974, ch. 17, § 57, p.
308, was repealed by S.L. 1992, ch. 241, § 1.

58-304. Leases. — (1) The state board of land commissioners may lease any portion of the state land at a rental amount fixed and determined by the board. The rental amount shall be due and payable by the date and upon the terms set by the board in the lease. Provided however, all grazing leases shall provide for annual payments which shall be due and payable by the date set by the board in the lease.

(2) The state board of land commissioners shall notify the lessee of any increase in the applicable rental rate six (6) months in advance of the date the rent is due and payable.

(3) The lessee shall pay the rental to the director of the department of lands, who shall receipt for the same in the name of the board. Upon receiving such rental, the director shall immediately transmit the same to the state treasurer.

History.

1905, p. 131, § 13; reen. R.C. & C.L.,
§ 1572; C.S., § 2905; am. 1923, ch. 96, § 15,
p. 115; am. 1927, ch. 120, § 1, p. 164; I.C.A.,
§ 56-304; am. 1933, ch. 114, § 1, p. 184; am.
1941, ch. 91, § 4, p. 164; am. 1974, ch. 17,

§ 58, p. 308; am. 1981, ch. 148, § 1, p. 258;
am. 1985, ch. 182, § 1, p. 466; am. 1987, ch.
62, § 1, p. 113; am. 1992, ch. 241, § 3, p. 713;
am. 2000, ch. 84, § 1, p. 176; am. 2007, ch. 49,
§ 1, p. 122; am. 2008, ch. 27, § 14, p. 54.

STATUTORY NOTES

Cross References.

Airport land, leasing, §§ 21-604, 21-606.
Airports, leasing land adjacent to, §§ 21-
511, 21-512.

Director of department of lands, § 58-105.
Geothermal land, leasing, § 47-1601 et seq.
Lava Hot Springs property, leasing, § 67-
4406.

Mineral rights in state lands, leasing, § 47-
704.

Navigable river beds, leasing for mining
purposes, §§ 47-714 to 47-717.

Oil and gas leases, § 47-801 et seq.

Old penitentiary site, lease of, § 58-337.

Southern Idaho College of Education, leas-
ing real and personal property of, § 33-3202.
State treasurer, § 67-1201 et seq.

Writing required, lease not exceeding one
year excepted, §§ 9-503, 9-505.

Amendments.

The 2007 amendment, by ch. 49, deleted
“but in no case shall the rental for grazing
leases be due and payable earlier than Janu-
ary 1 or later than May 1 of each succeeding

year" from the end of the introductory paragraph.

The 2008 amendment, by ch. 27, corrected a subsection designation.

Compiler's Notes.

The title of the amendatory act of 1927 recited that it was amending section 2905 of the Compiled Statutes as amended by section 15 of chapter 96 of the 1925 Session Laws. Section 15 of chapter 96 of Session Laws 1923 was meant.

Section 16 of S.L. 1923, ch. 96 read: "If any

clause, sentence, paragraph, or part of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered."

Effective Dates.

Section 2 of S.L. 1933, ch. 114 declared an emergency. Approved March 1, 1933.

JUDICIAL DECISIONS

ANALYSIS

Disposing power of board limited.

Redemption by purchaser.

Right of lessee to sue trespasser.

Disposing Power of Board Limited.

This section, with others, limits power of state land board with reference to disposition of lands granted state by general government. *Tobey v. Bridgewood*, 22 Idaho 566, 127 P. 178 (1912).

Redemption by Purchaser.

Where the parties to a real estate contract obviously intended that the owner of the farm also have the rights to the state land lease and where the original state land lease was part of the property subject to the contract of sale, the state land lease should have been subject to the purchaser's right of redemption. *Christensen v. Christensen*, 100 Idaho 733, 605 P.2d 80 (1979).

Right of Lessee to Sue Trespasser.

Where government has caused a survey to be made, and by such survey identity of a school section is established, a lessee of the state has such an interest and equity in the property as to enable it to maintain an action to enjoin and restrain trespassers from entering upon the property and committing waste. This is especially true where such trespasser in no way connects himself with the government or the title to the land or shows that he has any right to acquire title to the land under any of the laws of the United States. *Azcuenaga Bros. Livestock & Land Co. v. Corta*, 19 Idaho 537, 115 P. 18 (1911).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Lands, § 67.

C.J.S. — 73B C.J.S., Public Lands, § 287 et seq.

58-304A. Forfeiture of cottage site leases — New leases — Collections — Disposition. — Upon forfeiture of a cottage site lease as provided in section 39-3610 [39-3636], Idaho Code, as amended, the department issuing the cottage site lease shall, as a condition of any new lease of such cottage site, collect from the new lessee an amount equal to all unpaid connection fees or charges, monthly rates, tolls or charges, and special benefits payments, as certified by the district to the department as unpaid by the cottage site lessee whose cottage site lease was forfeited. Any amounts so collected shall be immediately transmitted by the department collecting the same to the state treasurer to be placed in the revolving fund for water and sewer districts established in section 58-141A, Idaho Code, taking his receipt therefor in duplicate, filing one (1) with the state controller and the other receipt in the office of the department.

History.

I.C., § 58-304A, as added by 1979, ch. 100, § 4, p. 241; am. 1994, ch. 180, § 122, p. 420.

STATUTORY NOTES**Cross References.**

Great seal of state, § 59-1005.
State cotroller, § 67-1001 et seq.
State treasurer, § 67-1201 et seq.

Compiler's Notes.

The bracketed insertion near the beginning of this section was added by the compiler as § 39-3610 was redesignated as § 39-3636 by S.L. 1995, ch. 352, § 20.

Effective Dates.

Section 5 of S.L. 1979, ch. 100 declared an emergency. Approved March 20, 1979.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 122 of S.L. 1994, ch. 180 became effective January 2, 1995.

58-305. Payment of rental in advance — Extension of time — Adjustment of competitive bid rental rates. — All leases of state land, except mineral leases, shall be conditional upon the payment of rental, in advance, and a violation of this condition shall work a forfeiture of the lease, at the option of the state board of land commissioners, after thirty (30) days' notice to the lessee, such notice being sent to the post office of the lessee, as given by himself to the director of the department of lands when the lease is issued: provided however, that upon the application of any person, firm, corporation or association from whom such rent is or will be owing, the state board of land commissioners is hereby given authority and power to, in its discretion, extend the time of payment of such moneys for said leases for not to exceed two (2) successive years: provided, that the applicant enters into an agreement with the said state board of land commissioners to pay the interest on said amount of rent money from January 1 of the year which the same is otherwise due, to the date of payment, at the rate per annum set by the state board of land commissioners; that this authority shall extend to amounts due on outstanding leases, leases renewed and new applications for leases. Lease rental rates established by competitive bidding may not be adjusted during the term of a lease, except that the state board of land commissioners upon a finding of a material change of circumstances from those existing at the time of auction, may, after a majority vote of those present, reduce the rental to no less than fair market value.

History.

1905, p. 131, § 14; reen. R.C. & C.L., § 1573; C.S., § 2906; am. 1921, ch. 27, § 1, p. 35; am. 1923, ch. 7, § 1, p. 7; am. 1925, ch. 42, § 1, p. 59; I.C.A., § 56-305; am. 1951, ch. 53,

§ 1, p. 76; am. 1971, ch. 264, § 1, p. 1063; am. 1974, ch. 17, § 59, p. 308; am. 1978, ch. 283, § 1, p. 689; am. 1980, ch. 323, § 1, p. 818; am. 2000, ch. 84, § 2, p. 176.

STATUTORY NOTES

Cross References.

Director of department of lands, § 58-105.

Section 2 of S.L. 1925, ch. 42 declared an emergency. Approved February 16, 1925.

Effective Dates.

Section 3 of S.L. 1923, ch. 7 declared an emergency. Approved February 6, 1923.

Section 2 of S.L. 1971, ch. 264 declared an emergency. Approved March 25, 1971.

JUDICIAL DECISIONS

Disposing Power of Board Limited.

This section, with others, limits power of state land board with reference to disposition of lands granted state by general government.

Tobey v. Bridgewood, 22 Idaho 566, 127 P. 178 (1912), overruled on other grounds, Idaho-Iowa Lateral & Reservoir Co. v. Fisher, 27 Idaho 695, 151 P. 998 (1915).

58-306. Notice of lien for rent. — Whenever state land is leased, the director of the department of lands may file with the county recorder of the county in which said land is situated a notice of lien, stating the description of the land, the number of the lease and the name of the lessee, the dates of the execution and expiration of the lease, and that the state claims a lien on any crops grown upon said land for the payment of the rental, during the term of said lease or any extension thereof. From and after the recording of said notice, the claim of the state for rental for said leased land, during the original term of said lease or any extension thereof, shall constitute a lien on any crops grown on such lands, prior to and superior to the lien of any chattel mortgage, any labor lien, or any other claim or lien thereon.

History.

C.S., § 2906A, as added by 1925, ch. 38,

§ 1, p. 52; I.C.A., § 56-306; am. 1974, ch. 17, § 60, p. 308; am. 1992, ch. 241, § 4, p. 713.

STATUTORY NOTES

Cross References.

Notice by mail, § 60-109A.

58-307. Term of lease — Application for renewal — Allowance for improvements. — (1) No lease of state trust lands shall be for a longer term than twenty (20) years.

(2) Notwithstanding any other provisions of law, all state lands may be leased for a period of up to twenty-five (25) years to the federal government, to federal agencies, state agencies, counties, or cities, school districts or political subdivisions when leased for public purposes. Such leases for public purposes may be entered into by negotiation and shall secure a rental amount based on the fair market value of the state land.

(3) Notwithstanding any other provisions of law, all state endowment trust lands may be leased for a period of up to thirty-five (35) years for residential purposes as determined by the state board of land commissioners including, but not limited to, single family, recreational cottage site and homesite leases.

(4) Notwithstanding any other provisions of law, all state endowment trust lands may be leased for a period of up to forty-nine (49) years for commercial purposes under such terms and conditions as may be set by the

board, provided that, for such leases in excess of twenty (20) years, the board consults with the county commissioners of the county in which the lands are located before leasing the lands, and the use for which the land is leased shall be consistent with the local planning and zoning ordinances insofar as is reasonable and practicable. For each lease in excess of twenty (20) years, the department shall hold a hearing in the county in which the parcel is located.

(5) The term "commercial purposes" means fuel cells, low impact hydro, wind, geothermal resources, biomass, cogeneration, sun or landfill gas as the principal source of power with a facility capable of generating not less than twenty-five (25) kilowatts of electricity, industrial enterprises, retail sales outlets, business and professional office buildings, hospitality enterprises, commercial recreational activities, multifamily residential developments and other similar businesses. For purposes of this section, farming leases, grazing leases, conservation leases including lands enrolled in federal conservation programs such as the conservation reserve enhancement program (CREP), noncommercial recreation leases, oil and gas leases, mineral leases, communication site leases, single family, recreational cottage site and homesite leases, and leases for other similar uses, are not considered leases for commercial purposes. The terms fuel cells, low impact hydro, wind, geothermal resources, biomass, cogeneration, sun or landfill gas shall have the same definitions as provided in section 63-3622QQ, Idaho Code.

(6) The board may require that all fixed improvements constructed upon land leased for commercial purposes be removed or become the property of the state upon termination of the lease, and that any heirs, encumbrances or claims of third parties with respect to any improvements shall be expressly subordinate and subject to the rights of the state under this section.

(7) Except for oil and gas, mineral and commercial leases, the lease year shall run from January 1 through December 31, and all leases shall expire on December 31 of the year of expiration.

(8) All applications to lease or to renew an existing lease which expires December 31 of any year, shall be filed in the office of the director of the department of lands by the thirtieth day of April preceding the date of such expiration. Such applications will be considered by the state land board and be disposed of in the manner provided by law; except that the board may reject conflicting applications for a lease for commercial purposes if the lessee exercises the preference right to renew clause, and provided such right is specified in the lease.

(9) Where conflicts appear upon leases, except for mineral leases which, pursuant to chapter 7, title 47, Idaho Code, contain a preferential right to renew clause, such applications shall be considered as having been filed simultaneously. However, nothing herein shall be construed to prevent the state board of land commissioners from accepting and considering applications for new leases at any time.

(10) In case improvements have been made on land while under lease which is expiring, and the former lessee is not the successful bidder, but the

land is leased to another, the amount of such improvements shall be paid to the former lessee. The following shall be considered improvements: plowing done within one (1) year, provided no crop has been raised on the plowed land after such plowing, fencing, buildings, cisterns, wells, growing crops and any other asset which shall be considered an improvement by the director.

(11) Commercial leases of the state lands shall not be subject to the conflict auction provisions of section 58-310, Idaho Code. The board may, at its discretion, consider individual applications or call for proposals and sealed bids by public advertisement, and may evaluate said proposals and award the lease to the bidder whose proposal achieves the highest return over the term of the lease and who is capable of meeting such terms and conditions as may be set by the board; in the alternative, the board may call for lease applications by public advertisement and if more than one (1) person files an application to hold an auction in the same manner as provided in section 58-310, Idaho Code. In all cases, the board must obtain a reasonable rental, based upon fair market value of the state land, throughout the duration of the lease. The board may reject any or all proposals and any or all bids, and may reoffer the lease at a later date if the board determines that the proposals or bids do not achieve the highest and best use of the land at market rental.

History.

1905, p. 131, § 15; reen. R.C., § 1574; am. 1915, ch. 167, § 1, p. 376; compiled and reen. C.L., § 1574; C.S., § 2907; am. 1921, ch. 28, § 1, p. 36; I.C.A., § 56-307; am. 1941, ch. 162, § 1, p. 324; am. 1970, ch. 10, § 1, p. 17; am. 1972, ch. 108, § 1, p. 222; am. 1974, ch. 17, § 61, p. 308; am. 1979, ch. 25, § 1, p. 39; am. 1980, ch. 107, § 1, p. 244; am. 1987, ch. 111, § 1, p. 223; am. 1993, ch. 331, § 1, p. 1229;

am. 1995, ch. 174, § 1, p. 655; am. 1995, ch. 185, § 1, p. 670; am. 1997, ch. 36, § 1, p. 63; am. 1999, ch. 84, § 1, p. 280; am. 1999, ch. 86, § 1, p. 284; am. 2000, ch. 84, § 3, p. 176; am. 2000, ch. 187, § 1, p. 460; am. 2003, ch. 234, § 1, p. 598; am. 2003, ch. 295, § 1, p. 798; am. 2004, ch. 155, § 1, p. 491; am. 2007, ch. 138, § 1, p. 400; am. 2008, ch. 103, § 1, p. 285; am. 2008, ch. 115, § 1, p. 319; am. 2010, ch. 61, § 1, p. 109.

STATUTORY NOTES

Cross References.

Director of department of lands, § 58-105.

Amendments.

This section was amended by two 1999 acts which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 84, § 1, at the end of subsection (1) deleted “; provided, however, that”; redesignated former subsections (2) to (11) as present subsections (3) to (12); in the beginning of present subsection (2) inserted “Notwithstanding any other provisions of law, all”; deleted “other than public school endowment lands” preceding “may be leased”; inserted “to the federal government” following “twenty-five (25) years”; inserted “, school districts or political subdivisions” preceding “when leased for public purposes.”; and added the last sentence of subsection (2).

The 1999 amendment, by ch. 86, § 1, added subsections (3)(e) to (3)(h) and in subsection

(11) substituted “; in the alternative,” for “as may be set by the board.”

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 84, § 3, deleted former subsection (8) which read: “The annual rental shall be due and payable in advance of year one of the lease and by January 1 of each succeeding year, except for grazing leases which shall be due and payable by the date set by the state board of land commissioners in the lease, but in no case shall the rental for grazing licenses be due and payable earlier than January 1 or later than May 1 of each succeeding year”; redesignated former subsections (9) through (12) as present subsections (8) through (11); and in the first sentence of subsection (9), substituted “31” for “thirty-first”.

The 2000 amendment, by ch. 187, § 1, in subdivision (4)(e), inserted “Lot 15 (Pt.

NESE),” and substituted “sixty and two-tenths (160.20)” for “twenty-seven and seventeen hundredths (127.17)”.

This section was amended by two 2003 which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 234, added subsections (3)(i) and (3)(j); added subsection (5) and redesignated former subsections (5) through (11) accordingly.

The 2003 amendment, by ch. 295, substituted “mineral and commercial leases” for “and mineral leases” in present subsection (8).

The 2007 amendment, by ch. 138, in the first sentence in subsection (3), inserted “or for lands eligible for the federal conservation reserve enhancement program (CREP)”; in the first sentence in subsection (4), inserted “wind or geothermal energy projects”; added “and provided such right is specified in the lease” at the end in subsection (7); and in subsection (10), inserted “consider individual applications” in the second sentence, and substituted “In all cases” for “In either case” in the third sentence.

This section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 103, added subsection (3) and redesignated the subsequent subsections accordingly.

The 2008 amendment, by ch. 115, in subsection (5), in the first sentence, substituted “fuel cells, low impact hydro, wind, geothermal resources, biomass, cogeneration, sun or landfill gas as the principal source of power with a facility capable of generating not less than twenty-five (25) kilowatts of electricity” for “wind or geothermal energy projects,” in

the second sentence, deleted “geothermal leases” following “mineral leases,” and added the last sentence; and in subsection (7), deleted “geothermal” preceding “oil and gas.”

The 2010 amendment, by ch. 61, in subsection (1), substituted “state trust lands” for “state public school endowment lands”, deleted “other than those valuable for stone, coal, oil, gas or other minerals” after “lands”, substituted “twenty (20) years” for “ten (10) years”; in subsection (3), inserted “trust” after “endowment”; in the first sentence of subsection (4), inserted “trust” after “endowment”, deleted “or for lands eligible for the federal conservation reserve enhancement program (CREP)” after “commercial purposes”, substituted “twenty (20) years” for “ten (10) years”; in the last sentence of subsection (4), substituted “twenty (20) years” for “ten (10) years”; and in the first sentence of subsection (5), substituted “farming” for “agricultural”, inserted “conservation leases including lands enrolled in federal conservation programs such as the conservation reserve enhancement program (CREP), noncommercial recreation leases” after “grazing leases”.

Compiler's Notes.

Section 63-3622QQ, referred to at the end of subsection (5), became null and void, effective July 1, 2011.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 3 of S.L. 1921, ch. 28 declared an emergency. Approved February 23, 1921.

Section 2 of S.L. 1995, ch. 174 declared an emergency. Approved March 16, 1995.

JUDICIAL DECISIONS

ANALYSIS

Disposing power of board limited.
Redemption by purchaser.
Zoning laws.

Disposing Power of Board Limited.

This section, with others, limits power of state land board with reference to disposition of lands granted state by general government. *Tobey v. Bridgewood*, 22 Idaho 566, 127 P. 178 (1912), overruled on other grounds, *Idaho-Iowa Lateral & Reservoir Co. v. Fisher*, 27 Idaho 695, 151 P. 998 (1915).

Lease must be awarded to highest bidder. *East Side Blaine County Livestock Ass'n v. State Bd. of Land Comm'rs*, 34 Idaho 807, 198 P. 760 (1921).

Redemption by Purchaser.

Where the parties to a real estate contract obviously intended that the owner of the farm

also have the rights to the state land lease and where the original state land lease was part of the property subject to the contract of sale, the state land lease should have been subject to the purchaser's right of redemption. *Christensen v. Christensen*, 100 Idaho 733, 605 P.2d 80 (1979).

Zoning Laws.

This section shows clearly the intent of the legislature to subject only leases for commercial purposes to consultation with the county commissioners and the application of zoning restrictions, which were not made generally applicable to all leases of state endowment lands; as such, mineral leases on endowment

lands were immune from local zoning regulations. *State ex rel. Kempthorne v. Blaine County*, 139 Idaho 348, 79 P.3d 707 (2003).

Because the 2004 amendment of this section was in effect when adjoining landowners and their wildlife refuge sought an injunction to force state land lessees to comply with local zoning ordinances, the 2004 version, not the 2003 version, of this section applied. Under the 2004 version, the lessees were exempt

from conforming to the zoning ordinances because the lease did not exceed ten years. Applying the 2004 amendment of this section did not constitute a retroactive application of the statute because the 2004 change did not affect any vested right of the adjoining landowners, who had no vested right to prevent changes in the use of the state's property. *Fenwick v. Idaho Dep't of Lands*, 144 Idaho 318, 160 P.3d 757 (2007).

58-308. Improvements — Filing of receipt for payment — Mistake and fraud. — Should anyone apply to lease any of the lands belonging to the state upon which there are improvements belonging to another party, before the lease shall issue, he shall file in the office of the state board of land commissioners a receipt showing that the price of said improvements, as agreed upon by the parties, or fixed by the state board, has been paid to the owner thereof in full, or shall make satisfactory proof that he has tendered to such owner the price of said improvements, so agreed upon, or fixed by the board. If, by any mistake or error, any money has been, or shall hereafter be, paid on account of any sale or lease of state lands, or if any land or timber shall have been, or shall hereafter be sold by the state, or lease executed, which land or timber shall have been, or shall hereafter be, by a court or tribunal of competent jurisdiction, adjudged to belong to another than the state of Idaho, at the date of such sale or the execution of such lease, a claim shall be presented to the state board of examiners, and, if authorized by them, the state controller shall draw a warrant in favor of the party paying said money, and the state treasurer shall pay the same out of the fund into which such money was deposited or placed. If through any fraud, deceit or misrepresentation, any party or parties shall procure the issuing of any lease for state lands the board shall have the authority to cancel such lease.

History.

I.C., § 58-308, as added by 1905, p. 131, § 16; reen. R.C. & C.L., § 1575; C.S., § 2908;

I.C.A., § 56-308; am. 1994, ch. 180, § 123, p. 420.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.
State controller, § 67-1001 et seq.
State treasurer, § 67-1201 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [Jan-

uary 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 123 of S.L. 1994, ch. 180 became effective January 2, 1995.

58-309. Bond of lessee — Penalty. — In leasing state lands the state board of land commissioners may require of the lessee such a bond as shall secure the state against loss or waste, or occupation of the land for more than thirty (30) days after the cancellation or expiration of the lease of said lessee, unless the said lessee becomes the purchaser of the land.

History. § 1576; C.S., § 2909; I.C.A., § 56-309; am. 1905, p. 131, § 17; reen. R.C. & C.L., 1992, ch. 241, § 5, p. 713.

JUDICIAL DECISIONS

Disposing Power of Board Limited. Tobey v. Bridgewood, 22 Idaho 566, 127 P. 178 (1912), overruled on other grounds, Idaho-Iowa Lateral & Reservoir Co. v. Fisher, 27 Idaho 695, 151 P. 998 (1915).

This section, with others, limits power of state land board with reference to disposition of lands granted state by general government.

58-310. Two or more applicants for same land — Auction of lease.
— Except as otherwise authorized in sections 58-310A and 58-310B, Idaho Code:

(1) When two (2) or more persons apply to lease the same land, the director of the department of lands, or his agent, shall, at a stated time, and at such place as he may designate, auction off and lease the land to the applicant who will pay the highest premium bid therefor, the annual rental to be established by the state board of land commissioners.

(2) The director shall give notice by letter at least fourteen (14) days prior to the date of such auction, which notice shall be sent in the course of regular mail, to each of the applicants, notifying them of the time and place such auction is to be held. The notice shall be sent to the name and address exactly as it is given in the application.

(3) If any applicants fail to appear in person or by proxy at the time and place so designated in said notice, the director may proceed to auction and lease any part or all of the lands applied for.

(4) The state board of land commissioners shall have power to reject any and all bids made at such auction sales, when in their judgment there has been fraud or collusion, or for any other reason, which in the judgment of said state board of land commissioners justifies the rejection of said bids.

(5) The challenger of the current lease shall be required to provide payment of one (1) year's rental on the lease payable at the time of application to lease. If the amount of the annual rental bid be not paid forthwith by the successful bidder, together with the expense of such sale, if the state board of land commissioners shall require the same to be paid as hereinbefore provided, or if for any reason the successful bidder does not accept the lease on the terms offered, the lease may be immediately reoffered in the same manner at public auction, without further notice.

(6) Only those persons who have filed applications in the manner and at the time provided for by statute or rule shall be permitted to bid at any such auction for the lease of state lands.

History. 1974, ch. 17, § 62, p. 308; am. 1978, ch. 283, § 2, p. 689; am. 1981, ch. 350, § 1, p. 723; am. 1992, ch. 241, § 6, p. 713; am. 1995, ch. 231, § 1, p. 783.
1905, p. 131, § 18; reen. R.C. & C.L., § 1577; C.S., § 2910; am. 1921, ch. 18, § 1, p. 26; am. 1923, ch. 117, § 1, p. 149; I.C.A., § 56-310; am. 1951, ch. 73, § 1, p. 114; am.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 1921, ch. 18 declared an emergency. Approved February 16, 1921.

Section 3 of S.L. 1923, ch. 117 declared an emergency. Approved March 9, 1923.

Section 3 of S.L. 1978, ch. 283 declared an emergency. Approved March 29, 1978.

JUDICIAL DECISIONS

ANALYSIS

Breach of contract.

Procedure.

Purpose.

Remedy.

Breach of Contract.

State can bring suit for breach of contract against bidder at auction sale of public land, who stopped payment on down payment check, even though state subsequently sells land to another. *State ex rel. Robins v. Clinger*, 72 Idaho 222, 238 P.2d 1145 (1951).

Procedure.

Where § 58-310B was declared unconstitutional, grazing leases awarded under that provision were to be opened again for consideration according to the procedures set forth in this section. *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 55, 982 P.2d 358 (1999).

As a result of § 58-310B being declared unconstitutional, the board of land commissioners was required to auction off and lease land pursuant to the procedures in this section. *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 68, 982 P.2d 371 (1999).

Purpose.

The board of land commissioners' assertion that it had a policy of granting a lease to a prior lessee at the previous leasing rate, despite the fact that the prior lessee did not place a bid at a conflict auction, was contrary to the legislative mandate set forth in this section; the rationale behind the requirement of conducting an "auction" is to solicit competing bids, with the lease being granted to the bid that would, in the discretion of the board, "secure the maximum long term financial return" to Idaho's schools. *Idaho Watersheds Project, Inc. v. State Bd. of Land Comm'rs*, 128 Idaho 761, 918 P.2d 1206 (1996).

Remedy.

Where two or more have applied to lease same land, writ of mandate will lie to compel board to lease to highest bidder. *East Side Blaine County Livestock Ass'n v. State Bd. of Land Comm'rs*, 34 Idaho 807, 198 P. 760 (1921).

58-310A. Legislative findings and purposes — Leases of single family, recreational cottage sites and homesites not subject to conflict application and auction provisions. — (1) The legislature of the state of Idaho finds:

- (a) That from time to time single family, recreational cottage site and homesite leases have been the target of conflict applications to lease said premises and property;
- (b) That single family, recreational cottage sites and homesites have typically been held by the same family, sometimes for as long as fifty (50) years;
- (c) That conflict applications for a lease require the state board of land commissioners to hold an auction between the applicants and award the lease to the highest bidder;
- (d) That existing statutes allow the board no discretion in rejecting applications, and only limited discretion in rejecting bids, notably for collusion or similar irregularities in the bidding process;
- (e) That, in the case of single family, recreational cottage site and

homesite leases, the conflict application and auction procedure have caused considerable consternation and dismay to the existing lessee at the prospect of losing a long-time lease;

(f) That, although conflict applications have been filed from time to time, the board has never held a conflict auction or realized any direct revenue from such applications;

(g) That section 8, article IX, of the constitution of the state of Idaho provides that the board manage state endowment lands in such manner as will secure the maximum long-term financial return to the institution to which granted or to the state if not specifically granted;

(h) That maximum long-term financial returns to the institutions to which granted are best obtained through stable leases at market rent.

(2) It is hereby declared that leases for single family, recreational cottage sites and homesites shall not be subject to the conflict application and auction provisions of sections 58-307 and 58-310, Idaho Code. The board shall reject any and all pending and future conflict applications filed under sections 58-307 and 58-310, Idaho Code, for single family, recreational cottage site and homesite leases.

(3) In the absence of the conflict application and auction procedure in the single family, recreational cottage site and homesite lease, and lease renewal process, the board shall insure that each leased lot generates market rent throughout the duration of the lease.

History.

I.C., § 58-310A, as added by 1990, ch. 187,
§ 1, p. 416.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1990, ch. 187 declared an emergency. Approved March 29, 1990.

58-310B. Two or more applicants for same land — Auction of lease. — (1) The legislature of the state of Idaho finds:

(a) That state endowment lands are a valuable resource to the people of Idaho, supporting employment opportunities and creating a significant source of income to the state and endowed state institutions;

(b) That many state endowment lands have few alternative uses, except for grazing livestock, that provide a stable long-term source of income to the endowed institutions of the state and contribute to tax revenues from all sources;

(c) That maximum long-term financial returns to the institutions to which granted are best obtained through stable leases;

(d) That long-term productivity of state endowment grazing lands and maximum long-term financial returns to the endowed institutions and the state are encouraged when lessees engage in cooperative grazing planning and management with the state of Idaho and federal land management agencies;

(e) That the promotion of good stewardship through the cooperative

development and implementation of written grazing management plans, which meet department standards, on state endowment lands should be encouraged.

(2) It is hereby declared that the purposes of this section are:

(a) To support the endowed institutions and the state by encouraging a healthy Idaho livestock industry so as to generate related business and employment opportunities on a state and local level, thus supporting additional sales, income and property taxes;

(b) To enhance the long-term financial returns to the endowed institutions and the state from the state endowment lands available for grazing leases.

(3) When two (2) or more qualified applicants, as determined by the state board of land commissioners apply to lease the same endowment land that is currently leased for grazing, the director of the department of lands, or his agent, shall hold an auction.

(a) At least fourteen (14) days prior to the date of such auction, the director, or his agent, shall give notice by letter, which notice shall be sent in the course of regular mail to each of the qualified applicants for the lease, notifying them of the time and place such auction is to be held. The notice shall be sent to the name and address exactly as it is given in the application.

(b) Each qualified applicant who appears in person or by proxy at the time and place so designated in said notice shall be deemed to have participated in the auction. To be awarded the lease, a qualified applicant must participate in the auction.

(4) To be a qualified applicant and therefore entitled to participate at an auction for a lease under this section:

(a) The conflict applicant must have provided payment of one (1) year's rental on the lease payable at the time of application to lease;

(b) The applicant must be capable of and willing to fulfill all provisions of any existing written grazing management plan which meets department standards associated with the parcel;

(c) The conflict applicant's proposed use of the state land must be compatible with the purpose and terms of a written grazing management plan which meets department standards;

(d) The applicant must have filed applications in the manner and at the time provided for by statute and rules duly promulgated thereunder.

(e) Nothing herein shall limit the state board of land commissioner's discretion to consider other qualification criteria, including but not limited to applicable criteria contained in subsection (6) of this section.

(5) The state board of land commissioners is expressly authorized to reject conflict applications, filed under section 58-307, Idaho Code, and this section, to lease parcels of grazing land.

(6) Criteria that may be considered by the state board of land commissioners, in deciding to whom the lease should be awarded, include, but are not limited to, the following:

(a) Whether the participant satisfies the requirements of subsection (4) of this section;

- (b) Whether the current lessee owns or controls sufficient real property to adequately feed the livestock in the lessee's agricultural operation when the lessee is not utilizing the state lands for grazing purposes;
 - (c) The importance of the state grazing lands to be leased upon the current lessee's total annual livestock operation, and the ability of the lessee to remain economically viable without the lease;
 - (d) The future revenues reasonably anticipated to be generated for the beneficiaries of the endowment and the state as a result of awarding the lease to one (1) applicant over others. If a conflict auction has been held, the board also may consider the premium bids resulting from the auction.
 - (e) The indirect benefits to the beneficiaries of the endowment from tax revenues from all sources generated by the lessee's proposed activities on the leasehold and those activities related thereto, and the long-term stability or appreciation of such tax revenues;
 - (f) The impact on endowment land or the return to the endowment if the leasehold is not managed in conjunction with adjacent grazing lands;
 - (g) Whether the current lessee has managed the conflicted parcels in accordance with a written cooperative grazing management plan which meets department standards;
 - (h) Whether the current lessee has applied in writing to the director for the development and implementation of a written cooperative grazing management plan which meets department standards;
 - (i) Nothing herein shall limit the state board of land commissioner's discretion to consider other criteria in deciding to whom the lease should be awarded.
- (7)(a) For the purposes of subsection (6)(h) of this section, the qualified applicant status of a current lessee having applied in writing to the director for the cooperative development and implementation of a written grazing management plan, meeting department standards, shall remain in force until the director notifies the lessee in writing that the department is ready to develop a written grazing management plan;
- (b) The failure of the lessee to enter into a cooperative grazing management plan within eighteen (18) months following the director's written notice shall constitute a breach of the lease;
 - (c) Upon written request by the lessee, filed before the expiration of the eighteen (18) month period, the department may authorize additional time to complete the plan, provided that development of the written grazing management plan is progressing to the satisfaction of the director;
 - (d) The department shall prioritize all written requests to establish grazing management plans, with such priority list in writing to be made available at appropriate department offices.
- (8)(a) If the board awards the lease for the conflicted parcels to the former lessee, any existing written grazing management plan shall be incorporated by reference in the lease;
- (b) If the board awards the lease for the conflicted parcel(s) to the former lessee who, prior to said award, has applied in writing to the director for the development and implementation of a written grazing management

plan which meets department standards, then said written grazing management plan shall, upon its development, be incorporated by reference into the lease as a matter of law, as if it had existed and been approved when the board awarded the lease;

(c) If the board awards the lease for the conflicted parcels to a conflict applicant, a written cooperative grazing management plan which meets department standards shall, upon its development, be incorporated by reference into the lease as a matter of law, as if it had existed and been approved when the board awarded the lease.

(9) The state board of land commissioners shall review all bids and shall have the power to reject any and all bids made at such auctions, when in their judgment:

(a) There has been fraud or collusion;

(b) The criteria listed in subsection (6) of this section have not been satisfied so as to support the findings and purposes of this section; or

(c) For any other reasons which, in the judgment of the state board of land commissioners, justify the rejection of said bids.

History.

I.C., § 58-310B, as added by 1995, ch. 231,
§ 2, p. 783; am. 1996, ch. 211, § 1, p. 683.

STATUTORY NOTES

Compiler's Notes.

The letter "s" enclosed in parentheses so appeared in the law as enacted.

Section 2 of S.L. 1996, ch. 211 declared an emergency. Approved March 12, 1996.

Effective Dates.

Section 3 of S.L. 1995, ch. 231 declared an emergency. Approved March 20, 1995.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.

Procedure for awarding leases.

Standing to challenge.

Constitutionality.

Because Idaho Const., Art. IX, § 8 requires that the state consider only the return to schools in the leasing of school endowment public grazing lands, the attempt to promote funding for schools and the state through the leasing of such lands in this section is unconstitutional. *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 55, 982 P.2d 358 (1999).

Procedure for Awarding Leases.

Where this section was declared unconstitutional, grazing leases awarded under this section were to be opened again for consideration according to the procedures set forth in § 58-310. *Idaho Watersheds Project v. State*

Bd. of Land Comm'rs, 133 Idaho 55, 982 P.2d 358 (1999).

As a result of this section being declared unconstitutional, the board of land commissioners was required to auction off and lease land pursuant to the procedures in § 58-310. *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 68, 982 P.2d 371 (1999).

Standing to Challenge.

Where an applicant for grazing leases was deemed not to be a "qualified applicant" pursuant to the criteria set forth in this section, the applicant was adversely affected by the prescribed process and suffered a distinct and palpable injury. *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 55, 982 P.2d 358 (1999).

There was a traceable causal connection between the claimed injury and the challenged conduct where an applicant for grazing leases was denied "qualified applicant" status based on the criteria set forth in this section. *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 55, 982 P.2d 358 (1999).

Because the board of land commissioner's application of this provision resulted in the denial of plaintiff's opportunity to participate in grazing lease auctions, the plaintiff sustained injury sufficient to give it standing to challenge the provision's validity. *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 68, 982 P.2d 371 (1999).

58-311. Leases of mineral springs. — The state board of land commissioners shall have full power and authority to make leases of the lands of the state of Idaho, containing mineral springs or mineral waters for such periods as they may deem advisable, not exceeding fifty (50) years, for the purpose of preserving and improving such mineral springs or waters situated upon state lands, and for the purpose of establishing sanitariums thereon.

No contract or leases as provided in this section shall be made in any form which would exclude the free use by the general public of any such mineral springs or mineral waters for the purpose of bathing or drinking.

History.

1909, p. 67; reen. C.L., § 1577a; C.S., § 2911; I.C.A., § 56-311.

58-312. Occupation of land without lease — Penalty — Suit for civil damages. — All persons using or occupying any state land without a lease from the state, and all persons who shall use or occupy state lands for more than thirty (30) days after the cancellation or expiration of a lease, shall be regarded as trespassers, and upon conviction shall be fined in a sum of not less than twenty-five dollars (\$25.00) nor more than \$500, or shall be punished by imprisonment in the county jail for a term of not to exceed six (6) months, or by both such fine and imprisonment. Any criminal suit under this section may be instituted by any person against any trespasser, and regardless of the fact whether or not the said land is under lease to any person other than the trespasser, and in case of a lessee, the sureties of his bond shall be liable to a civil suit for all damages sustained by the state by reason of the trespass. Any suit for civil damages against a trespasser, may be instituted by the attorney general in the name of the state, or in the event the land trespassed upon is leased, such suit for civil damages may be brought by the lessee in his own name: provided further, it shall be the duty of the prosecuting attorney to commence and prosecute all criminal actions under this section, arising in his county.

History.

1905, p. 131, § 27; reen. R.C., § 1578; am. 1911, ch. 195, § 1, p. 653; reen. C.L., § 1578;

C.S., § 2912; am. 1927, ch. 66, § 1, p. 82; I.C.A., § 56-312.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

JUDICIAL DECISIONS

ANALYSIS

Disposing power of board limited.
 Permit not a lease.
 Water appropriator a trespasser.

Disposing Power of Board Limited.

This section, with others, limits power of state land board with reference to disposition of lands granted state by general government. *Tobey v. Bridgewood*, 22 Idaho 566, 127 P. 178 (1912), overruled on other grounds, *Idaho-Iowa Lateral & Reservoir Co. v. Fisher*, 27 Idaho 695, 151 P. 998 (1915).

Permit Not a Lease.

Granting of a permit by state engineer cannot be construed into a contract leasing state land. *Tobey v. Bridgewood*, 22 Idaho 566, 127 P. 178 (1912), overruled on other grounds, *Idaho-Iowa Lateral & Reservoir Co. v. Fisher*, 27 Idaho 695, 151 P. 998 (1915).

Water Appropriator a Trespasser.

In order to initiate the right to appropriate

water under § 42-202, at a point upon land belonging to the state it is necessary for applicant to enter upon land owned by state for the purpose of making the necessary examination and surveys, maps and plans required in order to make a proper application to state engineer for a permit, and by so entering and occupying said land, without right first secured either by purchase or condemnation, such party would be a trespasser upon said land. *Tobey v. Bridgewood*, 22 Idaho 566, 127 P. 178 (1912), overruled on other grounds, *Idaho-Iowa Lateral & Reservoir Co. v. Fisher*, 27 Idaho 695, 151 P. 998 (1915).

Cited in: *State v. Pruss*, 145 Idaho 623, 181 P.3d 1231 (2008).

58-313. Sale of state land. — The state board of land commissioners may at any time direct the sale of any state lands, in such parcels as they shall deem for the best interests of the state. All sales of state lands shall be advertised in four (4) consecutive issues of some weekly newspaper in the county in which the land is situated, if there be such paper, if not, then in some newspaper published in an adjoining county, and in such other paper or papers as the board may direct. The advertisement shall state the time, place and terms of sale, a description of the land and value of the improvements, if any, thereon, and the minimum price per acre of each parcel as fixed by the board, below which no bid shall be received: provided, that sales of state lands shall only be made to citizens of the United States and to those who shall have declared their intentions to become such. If the required sum be not paid forthwith by the highest bidder any lands upon which such payment shall not be made may be immediately reoffered at public sale as before. If any land be sold on which surface improvements have been made by a lessee, or by a former purchaser whose certificate of purchase has for any reason been canceled, said improvements shall be appraised under the direction of the state board of land commissioners. When lands on which improvements have been made, as above, are sold, the purchaser, if other than the owner or former owner of said improvements, shall pay the appraised value of said improvements to the owner thereof, or to the former purchaser who placed the same thereon, taking a receipt therefor, and shall deposit such receipt with the state board of land commissioners before he shall be entitled to a certificate of purchase or patent of said land: provided, the lessee or former owner is not indebted to the state for delinquent rentals or instalment payments on said land. If he is indebted to the state, the value of the improvements shall be credited on his indebtedness and the surplus, if any, be paid to him. All such receipts

shall be filed and preserved in the office of said board: provided, that no school lands shall be sold for less than their appraised value nor for less than ten dollars (\$10.00) per acre; provided, further, that in the case of the sale of land leased as grazing land and which is too rough, rocky or steep to be reclassified as farming land, the lessee, if he is not the successful bidder, shall be entitled to continue in possession under the lease for a period of two (2) years from the first day of December next occurring after the date of sale at public auction of said land or until expiration of the lease, whichever period shall be shorter. During such period, all rental earned shall belong to the purchaser subject to the following provisions:

(1) If the land is sold upon instalment contract to the purchaser, the lessee shall continue to make rental payments to the director of the department of lands and the amount of rental earned after the date of sale shall, when received, be applied against and reduce the principal or interest, or both, payable by the purchaser;

(2) If the purchaser pays the purchase price in full, all rentals earned after the date of sale shall be paid directly to the purchaser. However, no lessee of state lands shall have any right to remain in possession under his lease upon the sale of such state lands for home or cabin site purposes, as provided by the regulations of the state board of land commissioners.

History.

1905, p. 131, § 19; reen. R.C. & C.L., § 1579; C.S., § 2913; am. 1927, ch. 218, § 1, p. 315; I.C.A., § 56-313; am. 1933, ch. 9, § 1,

p. 8; am. 1937, ch. 148, § 1, p. 243; am. 1965, ch. 178, § 1, p. 364; am. 1967, ch. 130, § 1, p. 299; am. 1974, ch. 17, § 63, p. 308.

STATUTORY NOTES

Cross References.

Brush growing on state land, sale, § 58-402.

Disposition made of purchase money, § 58-316.

Investment of funds received, § 57-716.

Mineral lands, sale of, § 47-701 et seq.

Not to exceed 100 sections of school land shall be sold in any one year, the sale to be in subdivisions of not to exceed 320 acres to any one purchaser, Idaho Const., Art. IX, § 8.

Purchase of state lands by irrigation districts, § 43-1601 et seq.

Sale of state lands to United States, § 58-135.

Southern Idaho College of Education, sale of real and personal property of, §§ 33-3202, 33-3207.

Surplus real property, sale of, §§ 58-331 to 58-335.

Timber on state lands, sale of, § 58-401 et seq.

Unlawful interference with sale, § 58-154.

Effective Dates.

Section 3 of S.L. 1933, ch. 9 declared an emergency. Approved January 25, 1933.

Section 2 of S.L. 1965, ch. 178 declared an emergency. Approved March 18, 1965.

JUDICIAL DECISIONS

ANALYSIS

Disposing power of board limited.

Notice of sale.

Public auction.

Disposing Power of Board Limited.

This section, with others, limits power of state land board with reference to disposition of lands granted state by general government.

Tobey v. Bridgewood, 22 Idaho 566, 127 P. 178 (1912), overruled on other grounds, Idaho-Iowa Lateral & Reservoir Co. v. Fisher, 27 Idaho 695, 151 P. 998 (1915).

Notice of Sale.

The fact that a party made uninvited alterations to a parcel of state property did not mean the property was improved so as to invalidate the Notice of Sale for the property in which the property was advertised as having no improvements. *Pines, Inc. v. Bossingham*, 131 Idaho 714, 963 P.2d 397 (Ct. App. 1998).

Public Auction.

Competition is a necessary element of an auction, and if prospective purchasers enter into an agreement with the purpose of stifling

competition in bidding, and which agreement has that effect, vendor may avoid the sale. *Hammond v. Alexander*, 31 Idaho 791, 177 P. 400 (1918).

State can bring suit for breach of contract against bidder at auction sale of public land, who stopped payment on down payment check, even though state subsequently sold land to another. *State ex rel. Robins v. Clinger*, 72 Idaho 222, 238 P.2d 1145 (1951).

Cited in: *Legg v. Barinaga*, 92 Idaho 225, 440 P.2d 345 (1968).

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Lands, § 253 et seq.

58-313(a). [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 58-313(a) was amended and re-

designated as § 58-313A by S.L. 1992, ch. 241, § 7.

58-313A. Notice to commissioners of county — Objection by commissioners or person aggrieved. — Whenever the state board of land commissioners shall have determined to direct the sale of state lands in the manner provided in section 58-313, Idaho Code, they shall first give notice in writing by certified mail to the commissioners of the county or counties in which said lands are located of their intention to direct such sale. If, within sixty (60) days of the receipt of such notice the county commissioners shall object to such sale, they shall file their objections in writing with the state board of land commissioners who shall thereupon at the next regular meeting reconsider the order directing such sale and if good cause appears therefor they shall rescind the order directing such sale or reapproving such sale. From any such order the applicant, the county commissioners in the name of the people of the county concerned, or any person aggrieved by such sale may appeal to the district court of the county in which the land is located for a review of said order. If the court finds such order to be arbitrary, erroneous or capricious, the order of the state board of land commissioners may be set aside and rendered null and void.

History.

I.C., § 58-313(a), as added by 1961, ch. 175,

§ 1, p. 269; am. and redesign. 1992, ch. 241, § 7, p. 713.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 58-

313(a) and was amended and redesignated as § 58-313A by § 7 of S.L. 1992, ch. 241.

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Lands, § 263.

58-314. Place and terms of sale — Cash sales — Noxious weed districts. — All sales of state lands shall be held in Ada county unless otherwise directed by the state board of land commissioners. Any such sale held away from Ada county shall take place at the county seat of the county or one (1) of the counties in which such lands are situated unless otherwise directed by the board.

Terms of payment shall be cash on the day of sale, except that the state board of land commissioners may sell state lands on installments with the down payment, number of installments and interest on deferred payments to be set by the board, but in no case shall the down payment be less than ten percent (10%) of the purchase price or the number of annual payments greater than twenty (20). The purchaser shall always have the right to make full payment with accrued interest at any time. Interest on deferred payments shall be payable annually in advance on January first, and interest for the first year to January first next succeeding shall be paid at the time of purchase.

When, in an installment sale, the conditions hereinbefore prescribed have been complied with, the state board shall make and deliver to the purchaser a certificate of purchase containing the name of the purchaser, a description of the land, the sum paid, the amount remaining due, and the date at which each of the deferred payments falls due and the amount thereof, and the amount and date of the several payments of interest to be made thereon. Such certificate shall be signed by the governor and countersigned by the director of the department of lands and a record of the same kept by him in a suitable book. When, in the judgment of the board, a bond by a purchaser of state lands is necessary, the state board shall require such purchaser to give a bond upon such conditions as the said board may determine.

Whenever a purchaser of state lands shall have complied with all of the conditions of the sale, paid all purchase money with the lawful interest thereon, and shall furnish the director with satisfactory proof of payment of taxes levied and assessed against his equity in said lands for the current year, or with satisfactory proof that such taxes are otherwise secured, he shall receive a deed for the land purchased. Such deed shall be signed by the governor, and countersigned by the secretary of state and by the director and attested with the great seal of the state and the seal of the state board of land commissioners, and said deed shall operate to convey to the purchaser a good and sufficient title in fee simple: provided that the conveyance by said deed shall be subject to reasonable easements for all roads used by the public which exist at the time of sale, unless the county commissioners of the county in which such roads are situated approve the release of such easements and the deed expressly conveys said easements.

Interest on all deferred payments to be at the rate per annum set by the state board of land commissioners. All payments shall be made to the director.

On state lands hereafter sold under contract of sale in noxious weed control districts, or which may become a part of a noxious weed control district, it shall be the duty of the contract purchaser if the lands are, or may become, infested with noxious weeds to join such a district and pay for the eradication and/or control of noxious weeds on these lands. If within ninety (90) days after receiving a notice by registered mail from the state land department that the lands are infested with noxious weeds, he does not join such a weed control program the director may request the treatment of such lands by those in charge of the weed control district. When the cost of such treatment has been determined, the supervisor of the weed control district shall send a bill to the purchaser for such eradication of noxious weeds, and if the amount of said bill be not paid within ninety (90) days the state board of land commissioners may declare the contract of sale forfeited and cancel the same, and if the contract is canceled said bill for noxious weed eradication and/or control shall be paid from the state noxious weed control fund appropriated for the treatment of noxious weeds upon state lands.

History.

1905, p. 131, § 20; reen. R.C., § 1580; am. 1913, ch. 91, § 1, p. 367; am. 1915, ch. 14, § 1, p. 50; am. 1917, ch. 100, § 1, p. 372; C.L., § 1580; C.S., § 2914; am. 1927, ch. 218, § 2, p. 315; I.C.A., § 56-314; am. 1933, ch. 79, § 1, p. 129; am. 1935, ch. 53, § 1, p. 99; am. 1949,

ch. 262, § 1, p. 529; am. 1965, ch. 142, § 1, p. 277; am. 1969, ch. 317, § 1, p. 976; am. 1974, ch. 17, § 64, p. 308; am. 1974, ch. 205, § 1, p. 1533; am. 1980, ch. 322, § 1, p. 816; am. 1986, ch. 130, § 1, p. 336; am. 1992, ch. 241, § 8, p. 713; am. 2001, ch. 183, § 25, p. 613.

STATUTORY NOTES

Cross References.

Certificate of purchase or location of lands, primary evidence of ownership, § 9-326.

Control of noxious weeds, § 22-2401 et seq.

Sale of state lands included within irrigation districts, § 43-1601 et seq.

Seal of department of lands, § 58-107.

Secretary of state, § 67-901 et seq.

Effective Dates.

Section 2 of S.L. 1935, ch. 53 declared an emergency. Approved February 25, 1935.

Section 2 of S.L. 1949, ch. 262 declared an emergency. Approved March 16, 1949.

JUDICIAL DECISIONS

ANALYSIS

Breach of contract.

Timber land.

Breach of Contract.

State can bring suit for breach of contract against bidder at auction sale of public land, who stopped payment on down payment check, even though state subsequently sold land to another. State ex rel. Robins v. Clinger, 72 Idaho 222, 238 P.2d 1145 (1951).

been previously sold by state and purchaser has been granted a fixed period in which to enter upon the land and remove timber, is timber land and, when sold, must be sold subject to the provisions of § 58-411. Pike v. State Bd. of Land Comm'rs, 19 Idaho 268, 113 P. 447 (1911).

Timber Land.

State land covered with timber, which has

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Lands, §§ 258 to 260.

58-315. Stump lands. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised R.C., § 56-315, was repealed by S.L. 1986, ch. 130, § 1580a, as added by 1917, ch. 100, § 2, p. 372; reen. C.L., § 1580a; C.S., § 2915; I.C.A., § 56-315, was repealed by S.L. 1986, ch. 130, § 2.

58-316. Forfeiture of rights of delinquent purchaser — Reinstatement — Disposition of purchase money. — If any purchaser of state land after receiving a certificate of purchase, as provided in this chapter, shall fail to make any of the payments stipulated therein, and the same remains unpaid for thirty (30) days after the time when it should have been paid as specified in such certificate, the director of the department of lands shall, by certified letter addressed to such delinquent purchaser at his last known post-office address, notify such purchaser of such delinquency and of the amount due, and that unless such amount be paid within sixty (60) days after the date of mailing such letter and notice, the board will declare all rights of the purchaser in and to said land forfeited and the certificate and contract relating thereto annulled.

After the expiration of said period of sixty (60) days, the state board of land commissioners shall declare such forfeiture, and shall annul said contract and certificate. Such action of the board shall be recorded in the minutes of the proceedings of the board. When such forfeiture shall have been declared and entered in the minutes, as hereinbefore provided, all rights of such purchaser in and to said lands shall be and are extinguished and the state board of land commissioners may sell the land again: provided, that unless other disposition has meanwhile been made of the land, said state board of land commissioners may, upon application of the former purchaser, if such application is made within two (2) years after the certificate has been canceled, reinstate any such canceled certificate upon compliance by the purchaser with such conditions as the board may impose. Such conditions to be imposed by the board shall include the funding of delinquent instalments of principal and interest accrued to the date of reinstatement, by distributing the same in annual payments, to commence with the expiration of the original period covered by the contract of sale, or any extension or extensions thereof, such deferred payments to draw interest from the date of the reinstatement of the certificate; but the board may, in its discretion, impose other conditions, and may, in its discretion, require the payment of such delinquencies in cash at the time of reinstatement. On reinstatement being made the board may, in its discretion, give credit to the purchaser, as for interest paid on his contract, of any amounts which may have been paid by the purchaser as rent of the land during the period of the cancellation of his certificate. Any and all reinstatements of certificates of purchase of state lands heretofore made by the state board of land commissioners are hereby legalized and validated: provided further, that in case of such default and declaration of forfeiture except as provided for in this section, all previous payments made by a purchaser on account of such land shall be forfeited to the state, and the title and right of possession to such land shall be in the state as if no sale had ever been made.

All purchase moneys arising from the sale of state land shall without delay be paid by the director of the department of lands to the treasurer who shall receipt for the same, and the same shall be credited by the treasurer to the land bank fund to which the land sold belonged. All earnings on such money shall be paid forthwith by the director to the state treasurer and credited by the treasurer to the land bank fund to which the land belonged: provided, that moneys arising from the sale of state land and earnings on those moneys shall be managed by the state board of land commissioners pursuant to section 58-133, Idaho Code; and provided further, that upon the application of any such owner of a certificate of purchase of state land, filed with the director before the expiration of the sixty (60) days limited in said notice, showing by affidavit, or otherwise, that he is unable to pay the amount then due, or that it would work great hardship upon him to be required to make such payment at that time, and stating that he believes he will be unable to make such payment on or before November first of the current year, the state board of land commissioners may extend the time of payment of the amount then due to November first succeeding: provided, that in case of such extension the purchaser shall pay interest on the amount due from January first of the current year to the date of payment at the rate per annum, set by the state board of land commissioners, such interest to be part of the amount payable. Provided, the state board of land commissioners may, in its sole discretion, enter into a supplemental agreement with any owner and holder of a sale certificate on state land, by the terms of which all delinquent payments of principal and interest due on such certificate may be deferred beyond the end of the term of such certificate, or any prior extension thereof, a number of years equal to the period of such delinquency. The said sum so deferred shall draw interest the same as if it were originally a part of the purchase price named in the sale certificate from the date of the supplemental certificate herein referred to until paid. The forms, terms and conditions of such supplemental agreement, and the form of the application therefor, shall be as prescribed by the board. Any such supplemental agreement as herein provided, and any agreement reinstating a canceled certificate, as herein provided, shall be deemed a part of the original sale certificate.

History.

1905, p. 131, § 21; reen. R.C. & C.L., § 1581; C.S., § 2916; am. 1921, ch. 59, § 1, p. 109; am. 1925, ch. 97, § 1, p. 142; am. 1927, ch. 220, § 1, p. 318; I.C.A., § 56-316; am. 1933, ch. 9, § 2, p.

8; am. 1945, ch. 157, § 1, p. 233; am. 1953, ch. 97, § 1, p. 128; am. 1969, ch. 317, § 2, p. 976; am. 1974, ch. 17, § 65, p. 308; am. 1980, ch. 324, § 1, p. 818; am. 1992, ch. 241, § 9, p. 713; am. 1998, ch. 256, § 48, p. 825.

STATUTORY NOTES

Cross References.

Deposit and control of funds, § 58-128.

Notice by mail, § 60-109A.

State treasurer, duty of in relation to funds, § 67-1202.

Effective Dates.

Section 3 of S.L. 1921, ch. 59 declared an emergency. Approved March 8, 1921.

Section 2 of S.L. 1925, ch. 97 declared an emergency. Approved February 27, 1925.

Section 3 of S.L. 1933, ch. 9 declared an emergency. Approved January 25, 1933.

Section 75 of S.L. 1974, ch. 17 provided that the act should take effect on and after July 1, 1974.

Section 63 of S.L. 1998, ch. 256 provided: "This act [which, in part, amended this sec-

tion] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds. Following the

successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described. Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies that were required by S.L. 1998, ch. 256; § 63, for the 1998 amendment of this section to become effective on July 1, 2000, were met.

JUDICIAL DECISIONS

ANALYSIS

Notice.

Reinstatement.

Notice.

The notice requirements of this section are not intended to protect the defaulting purchaser who already had notice of default and cancellation. *Ehco Ranch, Inc. v. State ex rel. Evans*, 107 Idaho 808, 693 P.2d 454 (1984).

Reinstatement.

Forfeiture under this section extinguishes a purchaser's rights in land after forfeiture, to

the extent that the state board of land commissioners may resell the property; only if the property has not been resold does the purchaser then have the right to apply for reinstatement; even then, the board may impose on the reinstated contract any conditions the board in its discretion chooses. *Ehco Ranch, Inc. v. State ex rel. Evans*, 107 Idaho 808, 693 P.2d 454 (1984).

OPINIONS OF ATTORNEY GENERAL

Costs associated with the sale of endowment lands may not be deducted from the

purchase moneys received by the department of lands. OAG 02-1.

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Lands, § 279.

58-317. Sales of less than legal subdivisions. — The state board of land commissioners may cause any portion of state lands to be laid out in subdivisions of less area than the legal subdivisions of the United States survey, upon showing to the satisfaction of the board that said subdivisions will be more salable or will sell at a better price than when undivided or that public convenience will be served thereby. A plat of any such subdivisions shall be filed in the office of the recorder of the county where said lands are situated. The board may sell such subdivisions from time to time, at public auction, in such quantities and on such terms as shall enable the state to realize the best prices therefor.

History.

1905, p. 131, § 22; reen. R.C. & C.L., § 1582; C.S., § 2917; am. 1927, ch. 78, § 1, p.

97; I.C.A., § 56-317; am. 1987, ch. 95, § 1, p. 187.

58-318. Supplying lost certificates. — Whenever a certificate of purchase shall be lost or wrongfully withheld by any person from the owner

thereof, the state board of land commissioners may receive evidence of such loss or wrongful detention, and upon satisfactory proof of the fact, may cause the certificate of purchase, or deed, as the case may be, to issue to such person or to his grantees or assigns, as shall appear to them to be the proprietor of the land described in the original certificate of purchase.

History.

1905, p. 131, § 23; reen. R.C. & C.L., § 1584; C.S., § 2918; I.C.A., § 56-318.

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Lands, § 253.

58-319. Land board to determine validity of claims. — The state board of land commissioners may hear and determine the claims of all persons who may claim to be entitled, in whole or in part, to any lands owned by this state, and the decision of said board shall be final until set aside by a court of competent jurisdiction, and the board shall have power to establish such rules and regulations as in their opinion may be proper or necessary to prevent fraudulent applications.

History.

1905, p. 131, § 24; reen. R.C. & C.L., § 1585; C.S., § 2919; I.C.A., § 56-319.

JUDICIAL DECISIONS

Appeal Not Authorized.

Statutes of this state do not authorize appeal from decision of state board of land commissioners in land contest case heard and

determined by such board. *Pierson v. State Bd. of Land Comm'rs*, 14 Idaho 159, 93 P. 775 (1908).

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Lands, § 263.

58-320. Lands exempt from taxation. — All lands heretofore sold under the provisions of this chapter shall be exempt from taxation for and during the period of time in which the title to said land is vested in the state of Idaho, but the value of the interest therein of the purchaser shall be taxed, which interest shall be assessed for purposes of taxation as other property is assessed and the improvements thereon shall also be taxed. Provided, however, in the case of state land hereafter sold under contract, such land shall be assessed at its full cash value as other property is assessed.

History.

1905, p. 131, § 25; reen. R.C. & C.L., § 1586; C.S., § 2920; I.C.A., § 56-320; am.

1941, ch. 84, § 1, p. 158; am. 1947, ch. 157, § 2, p. 407.

STATUTORY NOTES

Cross References.

County irrigation projects, § 42-2807.

Drainage district assessments, §§ 42-2927 to 42-2930.

Equities in state lands defined as personal property, § 63-109.

Exemption from irrigation district assessments, § 43-725.

Irrigation districts, annexation and exclusion of state lands, § 43-1201.

State property exempt from taxation, § 63-105A.

JUDICIAL DECISIONS

Measure of Taxable Interest.

Purchaser's interest is not limited to amount of money paid under terms of contract, but to value of purchaser's interest in land which can be determined only by ascertaining full cash value on the market and then determining purchaser's interest in land. *Lewis v. Christopher*, 30 Idaho 197, 163 P. 916 (1917).

In determining value at which land purchased from state should be assessed, the trial court properly directed that the contract purchase price be employed for the sole purpose of determining purchaser's equity in the land. *Stewart v. Common Sch. Dist. No. 17*, 66 Idaho 118, 156 P.2d 194 (1945).

58-321. Rebates of unearned interest on certificates of sale. — In all cases where, since January 1, 1917, interest on deferred payments of principal due the state of Idaho on contracts or certificates of sale of state lands has been, or shall hereafter be, paid in advance and during the advance period for which such interest is paid, the principal of said contract or certificate of sale is paid in full, thereby leaving in the hands of the state of Idaho a balance of unearned interest, such balance of unearned interest shall be repaid to the certificate or contract holder who makes final payment of principal thereon.

History.

1919, ch. 33, § 1, p. 114; C.S., § 2921; I.C.A., § 56-321. *

58-322. Rebates of erroneous payments of principal or interest. — In all cases of payments of principal or of interest to the state on such certificates of sale, where more than the amount due has been, since January 1, 1917, or hereafter shall be, paid by error or mistake, the amount of such overpayment shall be repaid on demand, to the person holding the certificate, as shown of record at the time the demand for repayment is made.

History.

1919, ch. 33, § 2, p. 114; C.S., § 2922; I.C.A., § 56-322.

58-323. Unearned interest — Certificate of rebate — Allowance and payment. — The officer receiving such final payment of principal for the state in cases of unearned and rebatable interest, or the officer receiving money paid by error or mistake on the principal or interest on such certificate of sale, is hereby authorized, directed and empowered to execute and deliver, over his signature, to the person entitled thereto, a certificate stating, in cases of rebate of unearned interest, that the holder or his

assignee, is entitled to a rebate of unearned interest under the terms of this chapter, giving the amount thereof, the date to which the interest on said certificate of sale had been paid, and the date when the principal on said certificate of sale was paid in full; and in cases of payment of principal or interest made by error or mistake, stating the date of the payment and the nature of the error or mistake, and the amount of rebate due. The said claim shall be paid from the fund of the state into which the moneys represented by said claim were paid and distributed on their receipt by the state, which payment shall be made by warrant drawn by the state controller on the treasurer of the state of Idaho, as in the case of other claims against the state.

History.

I.C., § 58-323, as added by 1919, ch. 33, § 3, p. 114; C.S., § 2923; am. 1923, ch. 87,

§ 1, p. 99; I.C.A., § 56-323; am. 1992, ch. 241, § 10, p. 713; am. 1994, ch. 180, § 124, p. 420.

STATUTORY NOTES

Compiler's Notes.

Section 4 of S.L. 1919, ch. 33 read: "The sum of five thousand dollars per annum, or so much thereof as may be necessary, is hereby appropriated from the general fund of the state of Idaho for the payment of such claims, which said appropriation is intended as a continuing appropriation of such amount for each year hereafter."

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 124 of S.L. 1994, ch. 180 became effective January 2, 1995.

Effective Dates.

Section 3 of S.L. 1923, ch. 87 declared an emergency. Approved March 5, 1923.

58-324 — 58-329. Deferment of payments — Leases for dormitory sites — Lease of state lands — "Agricultural lands" defined. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1923, ch. 15, § 1, p. 16; 1925, ch. 168, §§ 1 to 3, p. 306;

1931, ch. 4, § 1, p. 9; I.C.A., §§ 56-324 to 56-328; 1937, ch. 89, §§ 1, 2, p. 119, were repealed by S.L. 1992, ch. 241, § 1.

58-330. Integrated property records system. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 58-

330, as added by 2000, ch. 117, § 1, was repealed by S.L. 2008, ch. 332, § 1.

58-331. Designation of surplus real property. — Real property of the state of Idaho, the use of which by any department, officer, board, commission or other administrative agency of the state shall be terminated by law, and real property in the custody and control of any such agency which the agency shall declare to be no longer useful to or usable by it, shall

be deemed surplus, and, except as set forth in section 67-5709A, Idaho Code, custody and control thereof shall thereupon be vested in and title be transferred to the state board of land commissioners, subject to disposition by said board in accordance with the provisions of this act.

History.

1951, ch. 223, § 1, p. 452; am. 2000, ch. 305,
§ 1, p. 1040.

STATUTORY NOTES

Compiler's Notes.

The term "this act" at the end of the section

refers to S.L. 1951, ch. 223, which is compiled
as §§ 58-331 to 58-335.

OPINIONS OF ATTORNEY GENERAL

The legislature has enacted legislation authorizing the sale of public buildings which are surplus property and has authorized the

grant of properties to the state building authority. OAG 83-2.

58-332. Disposal of surplus real property. — (1) Upon transfer to it of such surplus real property the state board of land commissioners shall ascertain if such property is suitable for other state use, and if it is, then control and custody thereof shall be relinquished by the board to the agency which can make best use of the property. Such disposition may be by negotiated sale or exchange; provided, however, that such negotiated sales, transfers, or exchanges shall be for adequate and valuable consideration.

(2) If no state agency acquires the surplus property, the board may dispose of the surplus property to any tax-supported agency or unit of the state of Idaho or the United States other than the state of Idaho or its agencies. Such disposition may be by negotiated sale or exchange; provided however, that such negotiated sales, transfers or exchanges shall be for adequate and valuable consideration.

(a) In the event of such contemplated sale, transfer or exchange the state board of land commissioners shall cause to be published a notice of such contemplated sale, transfer or exchange, setting out in full the description of the property concerned, both as to what is being offered and what is to be received, and the proposed use of the property by the tax-supported unit which proposes to acquire such property.

(b) Such notice shall be published in a newspaper published in the county in which the property is situate for four (4) consecutive weeks prior to a certain fixed date therein, designating a time and place for public hearing in the matter.

(c) The state board of land commissioners shall determine at the next regularly scheduled meeting subsequent to such hearing as to acceptance or rejection of such proposed sale, transfer or exchange, and if accepted, the tax-supported unit shall thereafter have sixty (60) days in which to accept or reject the proffer, following such decision.

(d) If such negotiations fail, then the property may be subject to public sale as set forth in this section.

(3) If no tax-supported agency or unit of the state of Idaho or the United

States acquires the surplus property, the state board of land commissioners may offer at public sale, after notice of publication for four (4) consecutive weeks in a newspaper published in the county in which the property is situate, and sell the same to the highest and best bidder upon terms and conditions to be determined by the board and specified in the notice of sale. If the property does not sell at public auction, the board may have the property appraised and enter into negotiations with any party(s) to effect disposition of the property for adequate and valuable consideration. Sale may be by any method that will help dispose of the property including, but not limited to, direct negotiations with interested parties, use of advertising, hiring real estate agents and public auction.

(4) In all cases, the compensation received by the board for the sale of surplus property shall be returned to the agency which declared the property surplus to be placed in such account as may be appropriate. The board may deduct the costs of the sale from any proceeds before transmitting the proceeds back to the agency which declared the property surplus.

History.

§ 1, p. 104; am. 1986, ch. 113, § 1, p. 305; am. 1951, ch. 223, § 2, p. 452; am. 1971, ch. 48, 2000, ch. 305, § 2, p. 1040.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1971, ch. 48 declared an emergency. Approved March 2, 1971.

OPINIONS OF ATTORNEY GENERAL

The legislature has enacted legislation authorizing the sale of public buildings which are surplus property and has authorized the

grant of properties to the state building authority. OAG 83-2.

58-333. Disposition of proceeds of sale. — The state board of land commissioners shall at all times preserve the integrity of state funds and obligations in the disposition of surplus property; receipts or acquisitions from the property of any special fund shall accrue to such fund, first liquidating any encumbrances against such property; save that when any property has been acquired by the general fund, or is supported by or added to, by the general fund, then the receipts following liquidation of an encumbrance, shall be deposited in the permanent building fund for future appropriation or use.

History.

1951, ch. 223, § 3, p. 452.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

Permanent building fund, § 57-1101 et seq.

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Lands, § 263.

58-334. Costs of sale and transfer. — All costs of sale and of transferring property pursuant to such sale, including advertising, abstract fees and/or title insurance premiums, shall be borne by the purchaser, or in case of negotiated sale, transfer or exchange, shall be borne by the agency or person acquiring title to the property as a result thereof.

History.

1951, ch. 223, § 4, p. 452.

58-335. Lands exempt from act. — This act shall not be construed as applying to any lands or properties acquired under the act of congress, known as the Idaho Admission Act, or in the subsequent operations of the various endowment funds of the state. Nor shall this act apply to any lands or properties in the custody of the board of regents of the University of Idaho in its corporate capacity: provided, however, that the board of regents, desiring to avail itself of the facilities of this act, for the sale, exchange or transfer of any such properties, may proceed to negotiate a sale, transfer or exchange with the state board of land commissioners as would any other tax-supported agency. If the board of regents of the University of Idaho does not avail itself of the facilities of this act, the board of regents shall use a process for disposal of real property that includes, at a minimum, a required appraisal and public notice of the proposed real property disposal prior to disposal; and for property disposals that are not part of an exchange or transfer, consideration given to granting a first option to purchase to local, state and federal governmental entities.

History.

1951, ch. 223, § 5, p. 452; am. 2004, ch. 331, § 1, p. 987.

STATUTORY NOTES

Cross References.

Board of regents of university of Idaho, § 33-2802.

Compiler's Notes.

The term "this act" in the first two sentences refers to S.L. 1951, ch. 223, which is

compiled as §§ 58-331 to 58-335. The term "this act" in the last sentence refers to S.L. 2004, ch. 331, which is compiled as this section. Both instances probably refer to those sections enacted by S.L. 1951, ch. 223.

For Idaho Admission Act, see the first volume of the Idaho Code.

58-335A. Other lands exempt from act. — The provisions of sections 58-331 through 58-335, Idaho Code, shall not apply to surplus real properties of the Idaho transportation department, with the exclusion of office and maintenance yard sites. The Idaho transportation board shall promulgate rules to govern the sale of surplus real properties under this section, provided that in no case shall a property be sold or exchanged for a value less than that established through the appraisal process; and provided further that surplus real property may be offered for sale or exchange to any

tax-supported agency or political subdivision of the state of Idaho, other than the state of Idaho or its agencies, in whose jurisdiction the property is located, at a negotiated price not to exceed the appraised value. Such surplus property sold or exchanged for less than the appraised value must be used in perpetuity exclusively for a public purpose which shall be stated in the deed of transfer. If the stated use shall cease, the property shall revert to the ownership of the Idaho transportation department.

For the purpose of acquiring highway rights-of-way, the Idaho transportation board is authorized to exchange surplus real property of the department for other parcels of real property. In exchanging real properties, the board shall cause both parcels of real property to be appraised, and either the owner or the department shall pay to the other the difference in value.

Before the department disposes of surplus property at public sale, the department shall first notify any person who owns real property which is contiguous with the surplus property of the department that he has first option to purchase the surplus property for an amount not less than the appraised value. If more than one (1) adjoining owner wants to purchase the property, a private auction shall be held for such parties. If no owner of adjoining property exercises his option to buy, the department may proceed to public sale.

History.

I.C., § 58-335A, as added by 1986, ch. 129, § 1, p. 335; am. 1992, ch. 219, § 1, p. 657; am.

1996, ch. 209, § 1, p. 678; am. 2005, ch. 100, § 1, p. 319; am. 2008, ch. 382, § 1, p. 1053.

STATUTORY NOTES

Cross References.

Idaho transportation board, § 40-301 et seq.

first sentence in the last paragraph, deleted "if the property is valued at less than ten thousand dollars (\$10,000)" following "public sale," and substituted "appraised value" for "established value."

Amendments.

The 2008 amendment, by ch. 382, in the

58-335B. Governor's housing committee lands exempt from act.

— Sections 58-331 through 58-335, Idaho Code, shall not apply to real property if acquired by or on behalf of the governor's housing committee pursuant to [section] 67-455 or 67-455A, Idaho Code, as the same now exists or may from time to time be amended. This section shall apply to all real property acquired pursuant to section 67-455 or 67-455A, Idaho Code, before or after the effective date of this section.

History.

I.C., § 58-335B, as added by 1999, ch. 336, § 3, p. 912.

STATUTORY NOTES

Compiler's Notes.

The phrase "the effective date of this section" refers to the effective date of the enact-

ment of this section by S.L. 1999, ch. 336, which was effective March 24, 1999.

The bracketed insertion was added by the

compiler to conform to the statutory citation style.

Effective Dates.

Section 5 of S.L. 1999, ch. 336 declared an emergency. Approved March 24, 1999.

58-336. State lands — Assessment for local benefits. — All lands, including school lands, granted lands, escheated lands, or other lands owned by the state of Idaho in fee simple, situated within the limits of any incorporated city, town or local improvement district in this state, may be assessed and charged for the cost of local benefits specially benefiting such lands which may be ordered by the proper authorities of any such city, town or local improvement district:

Provided, that the leasehold, contractual or possessory interest of any person, firm, association, private or municipal corporation in any such lands shall be charged and assessed in the proportional amount such leasehold contractual or possessory interest is benefited;

Provided further, that the interest of the state in such property shall not be sold to satisfy the lien of such assessment, but only such interest or contract or other right therein as may be in private ownership shall be subject to such sale.

Provided further, that nothing in this act shall be construed to authorize the payment by the state of Idaho or any agency thereof of any tax levied by any local unit of government.

History.

1951, ch. 239, § 1, p. 497.

STATUTORY NOTES

Compiler's Notes.

The term "this act" in the last paragraph refers to S.L. 1951, ch. 239, which is codified as this section.

Effective Dates.

Section 2 of S.L. 1951, ch. 239 declared an emergency. Approved March 20, 1951.

58-337. Lease of old penitentiary site. — To preserve and enhance the cultural, educational, recreational and scenic values of the old penitentiary site at Boise, the state board of land commissioners or any other state agency having jurisdiction and control over the site is authorized to lease any part of the site to private persons, firms, or corporations for a term not to exceed fifty (50) years. The board is also authorized to relinquish control and custody over any part of the old penitentiary site to other state agencies for use as building or office space. Unless otherwise prohibited by law, proceeds from the rental of the old penitentiary site beyond cost of maintenance and historic interpretation shall be credited to the permanent building fund. For purposes of this act, the old penitentiary site at Boise includes all penitentiary reserve and acquired lands owned by the state of Idaho in:

Sections 12 and 13, Township 3 North, Range 2 East, Boise Meridian, and the west half of Section 18, Township 3 North, Range 3 East, Boise Meridian.

History.

I.C., § 58-337, as added by 1974, ch. 301,
§ 1, p. 1768.

STATUTORY NOTES**Cross References.**

Permanent building fund, § 57-1101 et seq.

paragraph refers to S.L. 1974, ch. 301, which
is codified as this section.

Compiler's Notes.

The term "this act" near the end of the first

CHAPTER 4**SALE OF TIMBER ON STATE LANDS****SECTION.**

- 58-401. Preservation of trees on state lands.
- 58-402. Disposal of dead and down timber.
- 58-403. Application to purchase timber —
Limitations on sale of timber.
- 58-404. Notice to department of water re-
sources — Objections — Hear-
ing and determination.
- 58-405. Land board to act on application.
- 58-406. Sale of parcels — Advertisement of
sale.
- 58-407. Bond of persons cutting timber.
- 58-408. Tree defined.
- 58-409. Violation of preceding sections a mis-

SECTION.

- demeanor — Action for dam-
ages.
- 58-410. Prosecuting attorneys to prosecute.
- 58-411. Sale of timber.
- 58-412. Notice of intent to cut timber — Cut-
ting permits.
- 58-413. Time in which to cut timber — Ex-
tension of time.
- 58-414. Other statutes unaffected.
- 58-415. Measuring method used in sale of
state-owned forest products.
- 58-416. [Amended and Redesignated.]

58-401. Preservation of trees on state lands. — No trees standing on lands of the state, which lands when cleared of trees will not be suitable for cultivation and raising crops, and no trees needed to conserve the snows, ice or water of any irrigation district, shall be cut from any part of the public lands belonging to the state, except as hereinafter provided.

History.

1905, p. 145, § 1; reen. R.C. & C.L., § 1588;
C.S., § 2925; I.C.A., § 56-401.

STATUTORY NOTES**Cross References.**

Fire hazard reduction programs not appli-
cable to forest lands belonging to state, when,
§ 38-406.

Forest insects, pests and diseases, determi-
nation of infested areas, § 38-602.

Forestry act, duty of director of department
of lands to administer under rules and regu-
lations of state board of land commissioners,
§ 38-102.

Idaho Forestry Act applicable to forest
lands belonging to state, § 38-105.

Penalty for cutting timber for shipment,
§ 18-7010.

Penalty for destruction of timber on state
lands, § 18-7009.

Transportation of forest products on state
highways without proof of ownership, §§ 18-
4628, 18-4629.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Lands,
§ 7 et seq.

58-402. Disposal of dead and down timber. — Dead and down timber on state land and trees and/or brush growing thereon and which are not suitable for sawing, manufacture or processing, and which are not required for water conservation, may be sold and disposed of by the director of the department of lands for the use of any applicant when authorized so to do by any general or special resolution of the state land board, upon written application being filed therefor, and without necessity of advertising as is otherwise provided by law on sale of state owned timber. The state land board may authorize the cutting and removal of an amount of such material, not to exceed fifteen (15) standard cords by an individual for his personal use as firewood without any payment to the state.

History.

C.S., § 2925A, as added by 1931, ch. 174, § 1, p. 289; I.C.A., § 56-402; am. 1943, ch. 96, § 1, p. 191; am. 1965, ch. 40, § 1, p. 64.

STATUTORY NOTES**Cross References.**

State land board, § 58-101.

on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 17, §§ 40, 42 (§§ 58-104, 58-105).

Compiler's Notes.

The "director of the department of lands" was substituted for "state land commissioner"

Effective Dates.

Section 2 of S.L. 1943, ch. 96 declared an emergency. Approved February 26, 1943.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Lands, § 82 et seq.

58-403. Application to purchase timber — Limitations on sale of timber. — Any person desiring to purchase timber on any lands owned by the state shall make application in writing to the director of the department of lands; which application shall contain a complete description by legal subdivisions of the lands upon which it is desired to purchase timber and a provision that if he is the successful bidder he will furnish such bond as may be required by the state board of land commissioners; conditioned, that he will comply with all rules and regulations made by the state board of land commissioners pertaining to the cutting and removal of said timber and the disposal of slashings and debris; the protection from fires or other damage of all trees or timber which are reserved from sale, and such other conditions as may be imposed by the state board of land commissioners with reference to any particular tract of timber sold; provided, however, that this provision does not prohibit the state board of land commissioners from offering for sale, or selling, timber without application having first been filed, and such authority is hereby expressly given to the state board of land commissioners.

History.

1905, p. 145, § 2; reen. R.C. & C.L., § 1589; C.S., § 2926; am. 1921, ch. 38, § 1, p. 48;

I.C.A., § 56-403; am. 1935, ch. 6, § 1, p. 18; am. 1974, ch. 17, § 66, p. 308; am. 1985, ch. 181, § 1, p. 466.

58-404. Notice to department of water resources — Objections — Hearing and determination. — The director of the department of lands

shall, before advertising any timber for sale, notify the director of the department of water resources, that the state board of land commissioners have an application for, or are considering the sale of such timber, giving in such notice, the description of the lands by legal subdivisions on which such timber is situated. The director of the department of water resources shall consider such notice, and if he desires to interpose any objections to the sale of the timber on said lands, because of any interference with the conservation of the irrigation waters of any watershed, he shall then within ten (10) days after receipt of said notice, file with the director of the department of lands, any objections that he may have thereto, setting forth in detail such objections and the reasons therefor. If no such objections are interposed within such time by the director of the department of water resources, and no extension of time is granted by the director of the department of lands for him to file such objections, it shall be presumed that there are no objections from his department to the making of such sale. However, if any objections are interposed, the state board of land commissioners shall appoint a time for the hearing of such objections, and shall determine whether or not, said sale should be made.

History.

1905, p. 145, § 4; reen. R.C. & C.L., § 1591;
C.S., § 2928; am. 1921, ch. 38, § 2, p. 48;

I.C.A., § 56-404; am. 1974, ch. 17, § 67, p.
308.

STATUTORY NOTES**Cross References.**

Department of water resources, § 42-1701
et seq.

Effective Dates.

Section 7 of S.L. 1921, ch. 38 declared an
emergency. Approved February 24, 1921.

58-405. Land board to act on application. — Upon the expiration of the time for filing protests as provided herein, the director of the department of lands shall refer all papers to the state board of land commissioners. If there be any protests from the director of the department of water resources, or any other persons, the board shall consider such protests, and such data as the director of the department of lands may furnish, together with his recommendations, and shall decide whether or not, the timber in question should be disposed of: provided, however, that the state board of land commissioners shall determine the trees or timber to be reserved on such land; provided further, however, that decisions by the state board of land commissioners to dispose of timber shall not receive judicial review pursuant to the administrative procedure act, chapter 52, title 67, Idaho Code.

History.

1905, p. 145, § 6; reen. R.C. & C.L., § 1593;
C.S., § 2930; am. 1921, ch. 38, § 3, p. 48;

I.C.A., § 56-405; am. 1974, ch. 17, § 68, p.
308; am. 1993, ch. 216, § 95, p. 587.

STATUTORY NOTES**Cross References.**

Department of water resources, § 42-1701
et seq.

JUDICIAL DECISIONS

Judicial Review.

Since the APA's right of review, § 67-5270, provides that the judicial review of an agency action is governed by that section unless another provision is applicable, the APA's grant of judicial review to parties aggrieved by final agency action expressly defers to contrary provisions in other substantive statutes and since such a contrary provision of

law is contained in this section, because it prohibits APA review of land board timber sales and the APA defers to this prohibition, an organization could not claim standing to challenge a timber sale by the land board as an aggrieved party under the APA. *Selkirk-Priest Basin Ass'n v. State ex rel. Batt*, 128 Idaho 831, 919 P.2d 1032 (1996).

58-406. Sale of parcels — Advertisement of sale. — (1) Whenever the state board of land commissioners directs a sale of timber, it shall direct such sale in such parcels as it deems for the best interests of the state.

(2) All sales of timber on state lands, where sold separate from the lands, shall be advertised in one (1) or more newspapers, to be designated by the board, one (1) of which shall be in the county where such timber is located, if there be such paper, if not, then in some newspaper published in an adjoining county, and if such timber is located in more than one (1) county, then in some newspaper in each of the said counties, if there be such paper, if not, then in some newspaper published in an adjoining county, once a week for four (4) consecutive weeks, except that in cases of catastrophic damage caused by insect, weather, or fire, the state board of land commissioners may direct an advertisement of less than four (4) consecutive weeks.

(3) The advertisement shall set forth the time and place of the sale, a description of the land by legal subdivisions on which such timber is situated, the length of time allowed for harvesting the timber, and the minimum price below which no bid shall be accepted.

(4) Small sales of timber, not exceeding one million (1,000,000) board feet in volume, according to the cruiser's estimate, and not exceeding a maximum value established by the state board of land commissioners, may be made as provided herein, except that only one (1) publication of advertisement shall be necessary and the date of sale shall be set not less than four (4) days after date of publication.

(5) Very small sales of timber, not exceeding two hundred thousand (200,000) board feet and not exceeding a maximum value established by the state board of land commissioners, may be made without advertisement and upon approval of the director of the department of lands.

History.

1905, p. 145, § 7; reen. R.C. & C.L., § 1594; C.S., § 2931; am. 1921, ch. 38, § 4, p. 48; I.C.A., § 56-406; am. 1955, ch. 15, § 1, p. 18; am. 1963, ch. 29, § 1, p. 170; am. 1969, ch. 200, § 1, p. 587; am. 1974, ch. 17, § 69, p.

308; am. 1978, ch. 253, § 1, p. 554; am. 1987, ch. 63, § 1, p. 114; am. 1990, ch. 124, § 1, p. 294; am. 1993, ch. 29, § 1, p. 97; am. 1995, ch. 165, § 1, p. 647; am. 2005, ch. 162, § 1, p. 497.

JUDICIAL DECISIONS

ANALYSIS

Acceptance or rejection of bids.
Constitutionality.

Acceptance or Rejection of Bids.

State board of land commissioners in accepting or rejecting a bid for state timber or land acts quasi-judicially, and, in the absence of manifest abuse of discretion, courts will not interfere. *Barber Lumber Co. v. Gifford*, 25 Idaho 654, 139 P. 557 (1914) (decided prior to 1921 amendment).

State board of land commissioners in accepting bids for state lands or timber has a right to know who the persons were for whom agent was making bid. *Barber Lumber Co. v. Gifford*, 25 Idaho 654, 139 P. 557 (1914).

State board of land commissioners has a large discretion in accepting bids for the purchase of public lands and, in determining which is highest bidder, may take into consideration facts other than the mere amount of

money offered, such as construction of railroad through property affected. *Barber Lumber Co. v. Gifford*, 25 Idaho 654, 139 P. 557 (1914).

State board of land commissioners is justified in accepting a lower bid accompanied by a certified check on a local bank for whole amount, where higher bidder gave uncertified checks for half the amount. *Barber Lumber Co. v. Gifford*, 25 Idaho 654, 139 P. 557 (1914).

Constitutionality.

This section is not unconstitutional in that it is not in conformity with Idaho Const., Art. IX, § 8, which provides that lands be sold "at public auction." *Barber Lumber Co. v. Gifford*, 25 Idaho 654, 139 P. 557 (1914).

58-407. Bond of persons cutting timber. — The state board of land commissioners shall require of all persons cutting timber upon state lands, a bond in a sufficient amount, with good and approved sureties, for the carrying out in good faith all the laws applicable thereto and all the terms and conditions imposed by the state board of land commissioners.

In any action or proceeding brought for the purpose of setting aside a sale of timber directed by the state board of land commissioners or brought for the purpose of delaying or preventing the cutting or removal of timber by the purchaser at any such sale, in which any party seeks a stay or seeks a temporary restraining order or preliminary injunction against the state board of land commissioners, the state of Idaho or the purchaser, the court shall require security as provided in rule 65(c) of the Idaho rules of civil procedure, in an amount equal to not less than ten percent (10%) of either the appraised value of the timber or the purchase price of the sale, whichever is greater, for the benefit of the fund for which the state holds in trust the timber included in the sale.

History.

1905, p. 145, § 8; reen. R.C. & C.L., § 1595; C.S., § 2932; am. 1921, ch. 38, § 5, p. 48;

I.C.A., § 56-407; am. 1992, ch. 264, § 1, p. 819.

STATUTORY NOTES

Effective Dates.

Section 7 of S.L. 1921, ch. 38 declared an emergency. Approved February 24, 1921.

Section 2 of S.L. 1992, ch. 264 declared an emergency. Approved April 8, 1992.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Integrity of principal.

Constitutionality.

Where an organization attempting to challenge the constitutionality of this section and § 58-409 pursuant to the Declaratory Judgment Act, § 10-1201 et seq. acknowledged

that such Act does not relieve a party from showing that it has standing to bring the action in the first instance since the organization did not have standing to challenge the timber sale it could not maintain a claim of

invalidity under the Declaratory Judgment Act. *Selkirk-Priest Basin Ass'n v. State ex rel. Batt*, 128 Idaho 831, 919 P.2d 1032 (1996).

Integrity of Principal.

Although a bond is required for the faithful

carrying out of a contract for purchase of state timber, state board of land commissioners has the right to consider character, reputation and ability of parties to carry out their contract. *Barber Lumber Co. v. Gifford*, 25 Idaho 654, 139 P. 557 (1914).

58-408. Tree defined. — For the purpose of sections 58-401 to 58-410[, Idaho Code], inclusive, the word “tree” shall be held to mean all vegetable growth of a woody texture of any size whatsoever. No lands contemplated in sections 58-401 to 58-410[, Idaho Code], inclusive, shall be leased for any purpose whatsoever that will destroy the tree growth.

History.

1905, p. 145, § 9; reen. R.C. & C.L., § 1596; C.S., § 2933; I.C.A., § 56-408.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertions were added by the

compiler to conform to the statutory citation style.

58-409. Violation of preceding sections a misdemeanor — Action for damages. — Any person violating any of the provisions of sections 58-401 to 58-410[, Idaho Code], inclusive, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of not less than ten dollars (\$10.00) nor more than \$100, or be punished by imprisonment of not less than sixty (60) days, or by both fine and imprisonment, as the court may direct. Suit may also be brought in the name of the state whenever such damage has been caused by any violation of the provisions of sections 58-401 to 58-410[, Idaho Code], inclusive, by any person or persons engaged in any business or pleasure pursuit whatever.

History.

1905, p. 145, § 14; reen. R.C. & C.L., § 1597; C.S., § 2934; I.C.A., § 56-409.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertions were added by the

compiler to conform to the statutory citation style.

58-410. Prosecuting attorneys to prosecute. — The prosecuting attorneys of the various counties of the state are hereby directed to prosecute in the name of the state all cases arising under sections 58-401 to 58-410[, Idaho Code], inclusive.

History.

1905, p. 145, § 15; reen. R.C. & C.L., § 1598; C.S., § 2935; I.C.A., § 56-410.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion was added by the

compiler to conform to the statutory citation style.

58-411. Sale of timber. — Timber belonging to the state of Idaho may be sold at public auction by the state board of land commissioners, at their option, as follows: ten percent (10%) of the estimated value of the timber, after deducting the development credits attendant to the sale of the timber, shall be presented as a bid deposit, in a form acceptable to the state, on the day of sale. Ten percent (10%) of the purchase price of the timber, after deducting the development credits attendant to the sale of the timber, shall be due and payable within ten (10) days of the date of sale. This sum shall be retained by the director of the department of lands as a cash reserve for the duration of the sale or the director may, at his discretion, apply all or a portion of the sum as final payment or payments for forest products removed or to satisfy other contractual obligations. The balance of such purchase price shall be paid at such time as the timber is scaled and billed with interest computed from the date of sale to the date of billing at the rate per annum set by the state board of land commissioners. Lump sum sales may be sold for cash at the time of sale or upon such terms and conditions as the state board of land commissioners may prescribe.

History.

I.C., § 58-411, as added by 1985, ch. 254,

§ 2, p. 705; am. 1992, ch. 144, § 1, p. 438; am. 2008, ch. 114, § 1, p. 319.

STATUTORY NOTES

Prior Laws.

Former § 58-411, which comprised 1907, p. 193, § 1; reen. R.C. & C.L., § 1599; C.S., § 2936; I.C.A., § 56-411; am. 1951, ch. 42, § 1, p. 52; am. 1955, ch. 268, § 1, p. 651; am. 1972, ch. 145, § 1, p. 315; am. 1980, ch. 72, § 1, p. 153, was repealed by S.L. 1985, ch. 254, § 1.

Amendments.

The 2008 amendment, by ch. 114, added "or the director may, at his discretion, apply all or a portion of the sum as final payment or payments for forest products removed or to satisfy other contractual obligations" in the third sentence.

JUDICIAL DECISIONS

Timber Land.

State land covered with timber, which has been previously sold by state and purchaser has been granted a fixed period in which to enter upon land and remove timber, is timber

land within the meaning of § 58-314 and this section, and when sold must be sold subject to the provisions of this section. *Pike v. State Bd. of Land Comm'rs*, 19 Idaho 268, 113 P. 447 (1911).

58-412. Notice of intent to cut timber — Cutting permits. — No timber shall be cut under the above provisions of this act except as follows: thirty (30) days' written notice shall be given to the state board of land commissioners, by filing such notice with the director, department of lands, of the particular land, described by legal subdivision or cutting unit, upon which the purchaser desires to cut timber. In addition, the purchaser shall provide the director of the department of lands with an adequate cash deposit, letter of credit, payment bond or other acceptable guarantee of

payment, which shall be at least equal to the estimated value of the amount of timber to be harvested during the next ninety (90) day period or a cash deposit in an amount equal to the entire value of the timber to be harvested from a legal subdivision or cutting unit to be included in a cutting permit. Permits to cut timber under these provisions shall be issued under rules and regulations adopted by the state board of land commissioners. The right to cut timber under the terms of this act does not accrue until the permit has been issued.

History.

I.C., § 58-412, as added by 1985, ch. 254, § 3, p. 705; am. 1987, ch. 354, § 1, p. 786.

STATUTORY NOTES

Prior Laws.

Former § 58-412, which comprised 1907, p. 193, § 2; reen. R.C. & C.L., § 1600; C.S., § 2937; I.C.A., § 56-412; am. 1963, ch. 43, § 1, p. 192, was repealed by S.L. 1985, ch. 254, § 1.

Compiler's Notes.

The phrase "the above provisions of this

act" refers to § 58-411, enacted by S.L. 1985, ch. 254, § 2.

The term "this act" in the last sentence refers to S.L. 1985, ch. 254, which is codified as §§ 58-411 to 58-415.

Effective Dates.

Section 2 of S.L. 1987, ch. 354 declared an emergency. Approved April 6, 1987.

58-413. Time in which to cut timber — Extension of time. — The timber cut on lands, where the timber only is purchased, must be cut within the time specified in the contract of sale, but not to exceed fifteen (15) years. The state board of land commissioners shall specify the time within which timber must be cut at the time of sale. If, at the expiration of the contract period named at the time of sale in which the timber must be removed, the purchaser desires further time for the removal of said timber, application may be made to the state board of land commissioners for such extension, giving the legal subdivision or cutting unit upon which such extension is desired, and making satisfactory proof that the timber purchased under the contract has not been cut or removed, and the state board of land commissioners may extend the time from year to year, for a period of not to exceed fifteen (15) years from date of sale, upon payment of such additional interest and extension fees as the board may require. All timber remaining after such period shall be the property of the state.

History.

I.C., § 58-413, as added by 1985, ch. 254, § 4, p. 705.

STATUTORY NOTES

Prior Laws.

Former § 58-413, which comprised 1907, p. 193, §§ 3, 5; reen. R.C. & C.L., § 1601; C.S.,

§ 2938; I.C.A., § 56-413; am. 1955, ch. 268, § 2, p. 651; am. 1974, ch. 17, § 70, p. 308, was repealed by S.L. 1985, ch. 254, § 1.

58-414. Other statutes unaffected. — Nothing in sections 58-411 through 58-413, Idaho Code, shall be construed as changing or modifying

any other statute relative to the sales of timber, but shall be construed as being in addition thereto, and as authorizing the sale of timber on such terms and conditions as provided in sections 58-411 through 58-413, Idaho Code.

History.

1907, p. 193, § 6; reen. R.C. & C.L., § 1603;

C.S., § 2940; I.C.A., § 56-415; am. and redesign. 1985, ch. 254, § 5, p. 705.

STATUTORY NOTES

Prior Laws.

Former § 58-414, which comprised 1907, p. 193, § 4; reen. R.C. & C.L., § 1602; C.S., § 2939; am. 1925, ch. 84, § 1, p. 118; I.C.A., § 56-414; am. 1951, ch. 41, § 1, p. 51, was repealed by S.L. 1985, ch. 254, § 1.

Compiler's Notes.

This section was formerly compiled as § 58-415.

JUDICIAL DECISIONS

Construction.

Under this section, § 58-411 was intended to supplement and supplant provisions of § 58-314, with reference to authorizing sale of timber and timber lands on payment of

instalments, instead of requiring all cash to be paid at time of sale. *Pike v. State Bd. of Land Comm'rs*, 19 Idaho 268, 113 P. 447 (1911).

58-415. Measuring method used in sale of state-owned forest products. — For sales of forest products from state lands, the state board of land commissioners shall cause the forest products to be measured, in lieu of selling by lump sum based on a cruise, unless in the discretion of the state board of land commissioners it shall be in the interest of the state to use the lump sum method. Acceptable methods of measuring forest products shall include, but are not limited to, weight, scaling, cubing, by the lineal foot, or by the piece.

History.

1943, ch. 95, § 1, p. 190; am. 1949, ch. 163, § 1, p. 351; am. 1957, ch. 119, § 1, p. 198; am. 1973, ch. 134, § 1, p. 251; am. 1974, ch. 17,

§ 71, p. 308; am. 1976, ch. 65, § 1, p. 232; am. 1978, ch. 258, § 1, p. 563; am. and redesign. 1985, ch. 254, § 6, p. 705; am. 2006, ch. 130, § 1, p. 381; am. 2007, ch. 50, § 1, p. 123.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 130, rewrote the section, which formerly read: "**Measuring method used in sale of state-owned timber — Cost of scaling — Payment.** In all cases of sales of timber from state lands, the state board of land commissioners shall cause the timber to be scaled, in lieu of measurement by cruising, unless in the discretion of the state board of land commissioners it shall be, in any particular instance, in the public interest to use the cruising method. In addition to the purchase price, the state board of land commissioners shall, in all cases where the scaling method is used, require the purchaser to pay, in addition to the purchase

price, and not as part thereof, the cost of scaling, as may be determined by the board in each case. The sum so collected shall in each case be remitted to the director of the department of lands to be by him placed in the land department's scaling trust account to be used for the purpose of paying the salaries and expenses of the scaling of state timber sales."

The 2007 amendment, by ch. 50, substituted "forest products" for "timber" throughout the section.

Compiler's Notes.

This section was formerly compiled as § 58-416.

Former § 58-415, was amended and redes-

ignated as § 58-414 by § 5 of S.L. 1985, ch. 254.

Section 75 of S.L. 1974, ch. 17 provided that the act should take effect on and after July 1, 1974.

Effective Dates.

Section 2 of S.L. 1957, ch. 119 declared an emergency. Approved March 1, 1957.

58-416. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 58-416 was amended and redesignated as § 58-415 by § 6 of S.L. 1985, ch. 254.

CHAPTER 5

STATE PARKS AND STATE FORESTS

SECTION.

58-501. Acquisition or lease of property for forestry and park purposes authorized.

58-502. Expenditures for management and utilization of areas — Sale of products.

SECTION.

58-503. Disposition of revenues from lands.

58-504. Payment of obligations.

58-505. Authority to sell, lease, transfer or exchange lands or products.

58-506. Separability.

58-507. Legislative findings and purposes.

58-501. Acquisition or lease of property for forestry and park purposes authorized. — The state board of land commissioners is hereby authorized to accept gifts, donations or contributions of land suitable for forestry or park purposes and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase or otherwise such lands as in the judgment of the state board of land commissioners are desirable for state forests.

History.

1937, ch. 201, § 1, p. 340.

STATUTORY NOTES

Compiler's Notes.

All the rights, duties, and obligations of the board of land commissioners created by this chapter, relating to parks, were transferred to the park and recreation board of the department of parks and recreation by section 10 of S.L. 1965, ch. 85, as amended by S.L. 1972, ch. 65, § 10, compiled as § 67-4227.

RESEARCH REFERENCES

Am. Jur. — 59 Am. Jur. 2d, Parks, Squares and Playgrounds, § 7.

58-502. Expenditures for management and utilization of areas — Sale of products. — When lands are acquired or leased under section 58-501[, Idaho Code], the state board of land commissioners is hereby authorized to make expenditures from any funds not otherwise obligated, for the management, development and utilization of such areas by the director of the department of lands; to sell or otherwise dispose of products

from such lands, and to make such rules and regulations as may be necessary to carry out the purposes of this act.

History.

1937, ch. 201, § 2, p. 340.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion was added by the compiler to conform to the statutory citation style.

The "director of the department of lands" was substituted for "state forester" on the authority of S.L. 1974, ch. 17, § 3, p. 308 (§ 38-101) and S.L. 1974, ch. 286, § 1.

All the rights, duties, and obligations of the

board of land commissioners created by this chapter, relating to parks, were transferred to the park and recreation board of the department of parks and recreation by section 10 of S.L. 1965, ch. 85, as amended by S.L. 1972, ch. 65, § 10, compiled as § 67-4227.

The term "this act" at the end of the section refers to S.L. 1937, ch. 201, which is compiled as §§ 58-501 to 58-506.

RESEARCH REFERENCES

Am. Jur. — 59 Am. Jur. 2d, Parks, Squares and Playgrounds, §§ 10 to 12.

58-503. Disposition of revenues from lands. — All revenues derived from lands now owned or later acquired under the provision of this act shall be segregated by the state treasurer for the use of the state board of land commissioners in the acquisition, management, development and use of such lands until all obligations incurred have been paid in full. Thereafter, fifty per cent (50%) of all net profits accruing from the administration of such lands shall be applicable for such purposes as the legislature may prescribe, and fifty per cent (50%) shall be paid into the school fund of the county in which lands are located. Provided, however, that revenues generated from such lands that are subsequently transferred to the department of parks and recreation shall remain with the department of parks and recreation.

History.

1937, ch. 201, § 3, p. 340; am. 1990, ch. 209, § 1, p. 466.

STATUTORY NOTES

Cross References.

Department of parks and recreation, § 67-4218.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

The term "this act" near the beginning of this section refers to S.L. 1937, ch. 201, which is compiled as §§ 58-501 to 58-506.

All the rights, duties, and obligations of the

board of land commissioners created by this chapter, relating to parks, were transferred to the park and recreation board of the department of parks and recreation by section 10 of S.L. 1965, ch. 85, as amended by S.L. 1972, ch. 65, § 10, compiled as § 67-4227.

Effective Dates.

Section 3 of S.L. 1990, ch. 209 declared an emergency. Approved April 3, 1990.

58-504. Payment of obligations. — Obligations for the acquisition of land incurred by the state board of land commissioners under the authority of this act shall be paid solely and exclusively from revenues derived from

such lands and shall not impose any liability upon the general credit and taxing power of the state.

History.

1937, ch. 201, § 4, p. 340.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1937, ch. 201, which is compiled as §§ 58-501 to 58-506.

All the rights, duties, and obligations of the board of land commissioners created by this

chapter, relating to parks, were transferred to the park and recreation board of the department of parks and recreation by section 10 of S.L. 1965, ch. 85, as amended by S.L. 1972, ch. 65, § 10, compiled as § 67-4227.

58-505. Authority to sell, lease, transfer or exchange lands or products. — The state board of land commissioners shall have full power and authority to sell, exchange or lease lands under its jurisdiction and/or exchange products of lands obtained under the provisions of this act for other forest or park lands when in its judgment it is advantageous to the state to do so in the highest orderly development and management of state forests and state parks: provided, however, said sale, lease or exchange shall not be contrary to the terms of any contract which it has entered into. The board shall have full power and authority to transfer to the department of parks and recreation lands acquired under the provisions of this chapter that are suitable for park or other purposes provided for in sections 67-4240 through 67-4244, Idaho Code.

History.

1937, ch. 201, § 5, p. 340; am. 1990, ch. 209, § 2, p. 466.

STATUTORY NOTES

Cross References.

Department of parks and recreation, § 67-4218.

Compiler's Notes.

The term "this act" near the beginning of this section refers to S.L. 1937, ch. 201, which is compiled as §§ 58-501 to 58-506.

All the rights, duties, and obligations of the board of land commissioners created by this

chapter, relating to parks, were transferred to the park and recreation board of the department of parks and recreation by section 10 of S.L. 1965, ch. 85, as amended by S.L. 1972, ch. 65, § 10, compiled as § 67-4227.

Effective Dates.

Section 3 of S.L. 1990, ch. 209 declared an emergency. Approved April 3, 1990.

RESEARCH REFERENCES

A.L.R. — Judicial notice of matters relating to public thoroughfares and parks. 86 A.L.R.3d 484.

Cost of substitute facilities as measure of compensation to state or municipality for con-

demnation of public property. 40 A.L.R.3d 143.

Judicial notice as to location of street address within particular political subdivision. 86 A.L.R.3d 484.

58-506. Separability. — Should any part of this act be declared unconstitutional or invalid by a court of competent jurisdiction, it shall not

affect the validity of the remainder of the act, but the act shall be construed as though that part were not incorporated therein.

History.

1937, ch. 201, § 6, p. 340.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1937, ch.

201, which is compiled as §§ 58-501 to 58-506.

58-507. Legislative findings and purposes. — The legislature of the state of Idaho finds:

(1) That the following described tracts of endowment land, containing fifty-seven and two-tenths (57.2) acres of endowment land, more or less, managed by the state board of land commissioners, are located near, adjacent to, or within the boundaries of Ponderosa State Park near McCall, Idaho:

(a) Part Government Lot 1, Part Government Lot 2, Section 4, T18N, R3E, B.M., containing forty-eight (48) acres, more or less, and commonly referred to as Lakeview Village;

(b) One (1) parcel of vacant land in Government Lots 1 and 2, Section 4, T18N, R3E, B.M., containing six (6) acres, more or less;

(c) Part Government Lot 7, Section 34, T19N, R3E, B.M., containing two and eight-tenths (2.8) acres, more or less, commonly referred to as the Nazarene Church Camp;

(d) One (1) cottage site lease lot in Government Lot 7, Section 34, T19N, R3E, B.M., containing four-tenths (.4) acres, more or less, currently leased to Marie Whitesel.

(2) That the Idaho park and recreation board manages Ponderosa State Park for public recreation and desires to consolidate ownership and management of the described parcels of endowment land with the existing park;

(3) That endowment lands are held in trust by the state board of land commissioners and are managed to generate the maximum long-term financial returns to the institution to which granted, or to the state if not specifically granted;

(4) That any transaction in which the Idaho park and recreation board acquires title to endowment lands, for inclusion in Ponderosa State Park, the state board of land commissioners shall receive title to real property of equivalent market value through land exchange;

(5) The Idaho park and recreation board and the state board of land commissioners have agreed to enter into a contract by which the Idaho park and recreation board may acquire the described endowment lands, associated timber, and improvements now owned by the state board of land commissioners, through land exchange at not less than fair market value, as determined by qualified appraisals;

(6) The Idaho park and recreation board has agreed to acquire title to the described endowment lands subject to any outstanding rights and reservations of record, and shall pay all costs of the transactions including, but not limited to, surveys and appraisals;

(7) It is the intent of the legislature to provide funds for this exchange to the Idaho park and recreation board in a timely manner.

History.

I.C., § 58-507, as added by 1998, ch. 289,
§ 1, p. 925.

STATUTORY NOTES

Cross References.

Park and recreation board, § 67-4221.

CHAPTER 6
RIGHTS OF WAY OVER STATE LANDS

SECTION.

58-601. Rights of way for ditches and reservoirs.

58-602. Reservoir lands may be withheld from sale.

SECTION.

58-603. Rights of way for public utility lines, highway, and other purposes.

58-604. Rights of way — Grant to United States.

58-601. Rights of way for ditches and reservoirs. — Any person or persons desiring to construct over or upon any of the lands owned or controlled by the state of Idaho, any ditch, canal, reservoir or other works for carrying or distributing public waters for any beneficial use, may make application to the state board of land commissioners for said right of way, and shall at the same time file, in duplicate, both in the office of the state board of land commissioners and in the office of the department of water resources, maps showing the location of such lands by accurate survey of such ditch, canal, reservoir or other irrigation works. Such map shall be drawn on tracing linen on a scale of not less than one thousand (1000) feet to the inch, and shall be accompanied by the field notes of survey of such irrigation works.

In the case of a reservoir the maps shall show by contour lines at intervals not greater than ten (10) feet, the topographic features of such reservoir site, and shall state the capacity of such reservoir in acre feet; and when the dam or embankment of such reservoir shall be more than ten (10) feet in height, plans showing the construction of such dam or embankment shall be filed in duplicate in the office of the state board of land commissioners and in the office of the department of water resources. All such maps, plans and field notes shall be certified by the engineer under whose direction such surveys or plans were made. If such map or description is defective or incomplete, the state board of land commissioners may order the same to be corrected; and the state board of land commissioners may grant land for such right of way upon the payment of such compensation therefor as may be deemed reasonable, not less than ten dollars (\$10.00) per acre, and upon such terms and conditions as they may deem best: provided, that the works for which the right of way is herein provided must be completed within the time mentioned in the application for the same (which shall accompany such map), which shall in no case be more than five (5) years from the time of

filing such application and maps, and the construction of the works herein mentioned must be commenced within one (1) year after such application and maps are filed, and must be prosecuted to completion diligently and uninterruptedly on a scale reasonably commensurate with the magnitude of the proposed works, in order to obtain the right of way under this section.

It shall be the duty of the director of the department of lands, upon the granting of the said rights of way, to note the same upon the plats of the said lands on file in his office.

History.

1901, p. 191, § 8; am. 1907, p. 527, § 1; reen. R.C., § 1635; reen. C.L. 125:1; C.S.,

§ 2952; I.C.A., § 56-501; am. 1974, ch. 17, § 72, p. 308.

STATUTORY NOTES

Cross References.

Department of water resources, § 42-1701 et seq.

Rights of way for ditches, additional provision, § 42-1104.

Rights of way for irrigation districts, § 43-907.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

Nature of Grant.

Persons desiring to construct canals and reservoirs for a beneficial use are granted an easement over state land by compliance with the statute. Such a grant is not a sale within

purview of the constitution, but leaves the fee simple title in state. *Idaho-Iowa Lateral & Reservoir Co. v. Fisher*, 27 Idaho 695, 151 P. 998 (1915).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Lands, § 53 et seq.

58-602. Reservoir lands may be withheld from sale. — When it shall appear upon an investigation by the state board of land commissioners that certain lands belonging to the state are more valuable for reservoir purposes than for any other purpose, the said board may withhold such lands from sale, and such lands shall be reserved by the state for storage purposes as a means of reclaiming other state lands in the vicinity. If, upon investigation, it is ascertained that certain state lands are more valuable for reservoir purposes than for any other purpose, and can be used as a means of reclaiming other lands in that vicinity, the said board may withhold the same from sale until such time as it is advisable to sell the same and may sell such lands as a whole for the purpose of reservoir site, and upon such terms and conditions as they may deem advisable, but no such lands shall be sold for less than ten dollars (\$10.00) per acre: provided, that if the lands so sold for reservoir purposes are not used for the purpose of said reservoir, or if the works in connection with which said reservoir is to be used are not constructed within five (5) years from the granting or sale of the said lands,

or such further time as the state land board shall grant, the rights granted shall revert to the state.

History. reen. R.C., § 1636; reen. C.L. 125:2; C.S., 1901, p. 191, § 9; am. 1907, p. 527, § 2; § 2953; I.C.A., § 56-502.

58-603. Rights of way for public utility lines, highway, and other purposes. — The state board of land commissioners is hereby empowered to grant, over and upon any land owned or controlled by the state of Idaho, rights of way for railroad, telegraph, telephone and electric lines, pipelines for natural and manufactured gas, rights of way for highway purposes, and rights of way for any other public or private purpose or beneficial use. Application for such right of way must be accompanied by a map, in duplicate, showing the course of such right of way over each smallest legal subdivision of land, and the amount of land required for said right of way. The said right of way may be granted by the state board of land commissioners upon such terms and upon such compensation being paid therefor as the said board may determine: provided, that no land shall be sold under the provisions of this section for less than ten dollars (\$10.00) per acre. Upon the said right of way being granted, it shall be the duty of the director of the department of lands to enter the same upon the plats of state lands on file in his office: provided further, that if the lands so granted are not used for the purpose specified in the application for right of way, within five (5) years from the granting of such right of way, then in such event the said lands so granted shall revert to the state; or if the tracks or works upon such lands for which such right of way has been granted are not completed within five (5) years after such right of way has been granted, the state land board shall have the right to declare such rights of way forfeited.

History. § 1, p. 75; I.C.A., § 56-503; am. 1974, ch. 17, 1907, p. 310, § 1; reen. R.C., § 1637; reen. § 73, p. 308. C.L. 125:3; C.S., § 2954; am. 1931, ch. 40,

STATUTORY NOTES

Effective Dates. the act should take effect on and after July 1, 1974. Section 75 of S.L. 1974, ch. 17 provided that

58-604. Rights of way — Grant to United States. — There is hereby granted over all the lands now or hereafter belonging to the state a right of way for ditches constructed by authority of the United States. All conveyances of state lands hereafter made shall contain a reservation of such right of way.

History. C.L. 125:4; C.S., § 2955; I.C.A., § 56-504; am. 1905, p. 373, § 1; reen. R.C., § 1638; reen. 1951, ch. 44, § 1, p. 54.

JUDICIAL DECISIONS

ANALYSIS

Construction of irrigation works.
Fee simple title.

Notice of right of way.

Construction of Irrigation Works.

Under statutes granting right of way over state lands for ditches constructed by authority of the United States, United States was authorized to construct an irrigation canal across lands sold by state subsequent to enactment of statute as against contention that under the constitution the board of land commissioners and not the legislature was authorized to dispose of state lands, since constitutional provisions relate only to disposition and sale. *United States v. Fuller*, 20 F. Supp. 839 (D. Idaho 1937).

Fee Simple Title.

Under statute granting right of way over

state lands for ditches, tunnels, telegraph and transmission lines constructed by authority of the United States, fee simple title is not conveyed to the United States. *United States v. Fuller*, 20 F. Supp. 839 (D. Idaho 1937).

Notice of Right of Way.

Statute granting right of way over state lands for ditches, tunnels, telegraph and transmission lines constructed by the United States was itself notice to all lessees of state lands of the rights of the United States to a right of way regardless of whether right of way was reserved in the conveyance by the state or not. *United States v. Fuller*, 20 F. Supp. 839 (D. Idaho 1937).

CHAPTER 7

CESSIONS TO THE FEDERAL GOVERNMENT

SECTION.

- 58-701. Military lands — Yellowstone National Park lands — Cession — Jurisdiction for execution of process reserved.
- 58-702. Consent to purchases by United States — Jurisdiction for execution of process reserved — Coordination with county commissioners.
- 58-703. Lava Hot Springs — Cession to United States authorized.

SECTION.

- 58-704. Lava Hot Springs — Description of lands.
- 58-705. Consent to land purchase for migratory labor homes projects — Jurisdiction.
- 58-706. Consent to land purchase for stream flow protection and other purposes.
- 58-707. Cession over real property of veterans administration at hospital.

58-701. Military lands — Yellowstone National Park lands — Cession — Jurisdiction for execution of process reserved. — Pursuant to article 1, section 8, paragraph 17, of the Constitution of the United States, consent to purchase is hereby given, and exclusive jurisdiction ceded, to the United States over and with respect to all lands embraced within the military posts and reservations of Fort Sherman and Boise Barracks, together with such other lands in the state as may be now or hereafter acquired and held by the United States for military purposes, either as additions to the said posts or as new military posts or reservations which may be established for the common defense; and, also, all such lands within the state as may be included in the territory of the Yellowstone National Park, reserving, however, to the state a concurrent jurisdiction for the execution, upon said lands, or in the buildings erected thereon, of all process, civil or criminal, lawfully issued by the courts of the state, and not incompatible with this cession.

History.

1890-1891, p. 40, § 1; reen. 1899, p. 22, § 1;

reen. R.C. & C.L., § 27; C.S., § 70; I.C.A., § 56-601.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Lands,
§ 66.

58-702. Consent to purchases by United States — Jurisdiction for execution of process reserved — Coordination with county commissioners. — (1) Consent is given to any purchase already made or that may hereafter be made, by the government of the United States, of any lots, or tracts of land, within this state, for the use of such government, and to erect thereon and use such buildings, or other improvements, as may be deemed necessary by said government; and over such lands and the buildings, or improvements, that are, or may be, erected thereon, the said government shall have entire control and jurisdiction, except that the state shall have jurisdiction to execute thereon all process, civil or criminal, lawfully issued by the courts of this state, and not incompatible with this cession.

(2) The United States shall coordinate its real property acquisitions with the board of county commissioners of the county in which the land is located.

History. 1895, p. 21, § 1; reen. 1899, p. 235, § 1; reen. R.C. & C.L., § 28; C.S., § 71; I.C.A., § 56-602; am. 2001, ch. 372, § 1, p. 1308.

58-703. Lava Hot Springs — Cession to United States authorized. — The state board of land commissioners, acting for and on behalf of the state of Idaho, is hereby authorized, empowered and directed to cede, grant, relinquish and convey to the government of the United States, such part or parcels of lands hereinafter described as may be convenient and necessary, and required as and for a site for a national veterans' sanatorium or hospital, and such portion of the hot mineral and cold water and water rights appurtenant to the said lands as may be necessary and convenient for the operation and maintenance of such institution, and such mineral baths as may be maintained and operated in connection therewith, and for the irrigation, operation and maintenance of the grounds and lands upon which such institution and baths are located and maintained. Upon acceptance by the United States government and the proper department or bureau thereof, authorized by any act of congress, to erect such veterans' sanatorium or hospital, the state board of land commissioners shall execute a conveyance in fee simple to said United States government or its department or bureau, which deed shall be signed by the governor and countersigned by the secretary of state and by the director of the department of lands, and attested with the great seal of the state and seal of the state board of land commissioners, which said deed shall operate to convey a good and sufficient title in fee simple.

History. 1931, ch. 196, § 1, p. 340; I.C.A., § 56-603;
am. 1974, ch. 17, § 74, p. 308.

STATUTORY NOTES

Compiler's Notes.

S.L. 1931, ch. 196 contained a preamble which read: "Whereas, the state of Idaho is the owner of those certain lands known as the Lava Hot Springs, particularly described as the northwest quarter (NW 1/4) of the southwest quarter (SW 1/4) and the lots nine (9) and ten (10) in section twenty-two (22), and the lots seven (7) and (8) in section twenty-one (21) in township nine (9) south or range thirty-eight (38) east of the Boise meridian in Idaho by gift and grant from the government of the United States, and of certain water and water rights appurtenant thereto, and

"Whereas, certain parts and parcels of the said described lands and certain portions of such water and water rights are of greater value to the United States Government as

and for a site for a national veterans' sanatorium, or hospital, and the maintenance and operation of the same, than they are to the state of Idaho for any purpose for which the state may legally use them, and

"Whereas, the use of a portion of the above described lands as a site for a federal sanatorium or hospital is hereby declared to be the application of said lands to a public use, and

"Whereas, the act of the Congress of the United States which granted the above lands to the state of Idaho was made with no restriction as to alienation, save that such lands be applied to a public use."

Effective Dates.

Section 75 of S.L. 1974, ch. 17 provided that the act should take effect on and after July 1, 1974.

OPINIONS OF ATTORNEY GENERAL

The use of the terms "water rights" and "appurtenant" in this section and § 58-704 in reference to the lands at Lava Springs is a strong indicator that the Lava Springs Foun-

dation merely controlled the use of the water under a traditional state water right that is appurtenant to lands at Lava Hot Springs. OAG 97-1.

58-704. Lava Hot Springs — Description of lands. — The lands or such portion thereof as may be necessary and convenient for the location of, and for a site for such national veterans' sanatorium or hospital, and which this act declares may be conveyed as provided in section 58-703[, Idaho Code], are particularly described as follows:

The northwest quarter (NW 1/4) of the southwest quarter (SW 1/4) and the lots nine (9) and ten (10) in section twenty-two (22), and the lots seven (7) and eight (8) in section twenty-one (21) in township nine (9) south of range thirty-eight (38) east of the Boise meridian in Idaho, and the waters and water rights appurtenant thereto.

History.

1931, ch. 196, § 2, p. 340; I.C.A., § 56-604.

STATUTORY NOTES

Compiler's Notes.

The term "this act" in the first paragraph refers to S.L. 1931, ch. 196, which is codified as §§ 58-703 and 58-704.

The bracketed insertion in the first paragraph was added by the compiler to conform to the statutory citation style.

Effective Dates.

Section 3 of S.L. 1931, ch. 196 declared an emergency. Approved March 16, 1931.

OPINIONS OF ATTORNEY GENERAL

The use of the terms "water rights" and "appurtenant" in § 58-703 and this section in reference to the lands at Lava Springs is a

strong indicator that the Lava Springs Foundation merely controlled the use of the water under a traditional state water right that is

appurtenant to lands at Lava Hot Springs.
OAG 97-1.

58-705. Consent to land purchase for migratory labor homes projects — Jurisdiction. — Consent is given to any purchase already made, or that may hereafter be made, by the government of the United States of any lots, or tracts of land within this state, for migratory labor homes projects; and over such lands and the buildings or improvements that are, or may hereafter be, erected thereon the United States shall have entire control and jurisdiction, except that the state shall have jurisdiction to execute thereon any process, civil or criminal, lawfully issued by the courts of this state, and not incompatible with this cession.

History.

1943, ch. 152, § 1, p. 308.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1943, ch. 152 declared an emergency. Approved March 5, 1943. The title of this act did not provide for an emergency.

58-706. Consent to land purchase for stream flow protection and other purposes. — Consent of the state of Idaho is hereby given for the acquisition by the United States by purchase, of such lands in the state of Idaho, as in the opinion of the secretary of agriculture may be needed for stream flow protection, production of timber, erosion control, and/or other purposes, subject to the right of the state to cause its civil and criminal processes to be executed on such lands and to punish offenses against the laws of the state committed on lands so acquired.

History.

1935, ch. 37, § 1, p. 66.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1935, ch. 37 declared an emergency. Approved February 20, 1935.

58-707. Cession over real property of veterans administration at hospital. — The state of Idaho hereby accepts the cession of concurrent jurisdiction with the United States over the real property comprising the veterans administration hospital, Boise, Idaho, as permitted by Public Law 93-82 (38 U.S.C. 5007).

History.

1974, ch. 137, § 1, p. 1342; am. 1975, ch. 62, § 1, p. 128.

STATUTORY NOTES

Compiler's Notes.

Section 38 U.S.C. 5007 was omitted from the United States Code by Act June 17, 1979, P.L. 96-22. For a provision similar to the former section, see 38 U.S.C.S. § 8112.

The reference enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 1974, ch. 137 declared an emergency. Approved March 28, 1974.

Section 2 of S.L. 1975, ch. 62 declared an emergency. Approved March 18, 1975.

CHAPTER 8

TOWN SITES

SECTION.

- 58-801. Entry of town sites.
- 58-802. Conveyance — How executed.
- 58-803. Notice of entry.
- 58-804. Claims for lots.
- 58-805. Appointment of appraisers.
- 58-806. Appraisalment of unclaimed lots.
- 58-807. Notice of sale.
- 58-808. Conduct of sale — Reappraisalment and resale.
- 58-809. Purchase by entryman.
- 58-810. Proceeds of sale.
- 58-811. Suits to determine adverse claims.

SECTION.

- 58-812. First settler entitled to land.
- 58-813. Notice to commence suit.
- 58-814. Service of summons.
- 58-815. Conveyance of land in suit.
- 58-816. Expense of entry a charge on land.
- 58-817. Tender of charges and fees.
- 58-818. Conveyance to claimants.
- 58-819. Rights of trustee as claimant.
- 58-820. Trustee holds title from entry.
- 58-821. Costs of suit.
- 58-822. Contracts for conveyance.
- 58-823. Successor in office succeeds to trust.

58-801. Entry of town sites. — It is the duty of the corporate authorities of any city or incorporated town, or a judge of the district court within any county in which is situated any unincorporated town, to enter at the proper land office of the United States such quantity of land as the inhabitants of such city or town may be entitled to claim, in the aggregate, according to the population, in the manner required by the laws of the United States and the regulations prescribed by the secretary of the interior of the United States, and make and sign all necessary declaratory statements, certificates and affidavits, or other instruments requisite to carry into effect this chapter and chapter 8 of title 32 of the Revised Statutes of the United States, and to make proof, when required of the facts necessary to establish the claim of such inhabitants to the lands so granted by the laws of congress.

History.

1875, p. 698, § 1; R.S., § 2200; am. 1905, p. 84, § 1; reen. R.C. & C.L., § 2147; C.S.,

§ 3764; I.C.A., § 56-701; am. 1975, ch. 214, § 1, p. 594.

STATUTORY NOTES

Federal References.

Chapter 8 of title 32 of the Revised Statutes of the United States comprised sections 2380 through 2394 of the Revised Statutes. Those sections were codified as 43 U.S.C.S. §§ 711

to 715 and 717 to 724 in the United States Code. However, those sections were subsequently repealed by Act Oct. 21, 1976, P.L. 94-579, effective October 21, 1976.

JUDICIAL DECISIONS

Cited in: Robinson v. Lemp, 29 Idaho 661, 161 P. 1024 (1916).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Lands, §§ 125 to 128, 136. **C.J.S.** — 73A C.J.S., Public Lands, §§ 74 to 77.

58-802. Conveyance — How executed. — Any such corporate authorities, or judge, holding the title to any such lands in trust, as declared in said acts of congress, must, by a good and sufficient conveyance, grant and convey the title to each and every block, lot, share or parcel of the same to the person entitled thereto, according to his rights or interest in the same as they exist, in law or equity, at the time of the entry of such lands, and when any parcel or share of such lands is occupied or possessed by one or more persons, claiming the same by grant, lease or sale, the respective rights and interests of such persons, in relation to each other in the same, are not changed or impaired by any such conveyance. Every conveyance, by such corporate authorities or judge, pursuant to the provisions of this chapter, must be executed and acknowledged as to admit the same to be recorded, and if made previous to the issuing of the patent for such lands, it must contain a covenant that the grantor will, after the issuing of such patent, execute, acknowledge and deliver to the grantee, his heirs or assigns, such further conveyance as may be or become necessary to fully vest and perfect the title to the lands therein described in the grantee, his heirs or assigns.

History.

1875, p. 698, § 2; R.S., § 2201; reen. R.C. & C.L., § 2148; C.S., § 3766; I.C.A., § 56-702.

JUDICIAL DECISIONS

ANALYSIS

Nature of trust.
Survey of town site.

Nature of Trust.

Trust imposed on mayor of incorporated town under the town site law is for the benefit of inhabitants, first as individuals and then collectively, as a community. Title to occupied lots is vested in trustee for the benefit of the several occupants at time of entry, and neither surveyor nor mayor can deprive them of that title. *Scully v. Squier*, 13 Idaho 417, 90 P. 573 (1907), *aff'd*, 215 U.S. 144, 30 S. Ct. 51, 54 L. Ed. 131 (1909).

Survey of Town Site.

Surveyor, in platting a town site, cannot

make a paper street and deprive actual occupants of vested rights in the premises occupied by them; his only authority is to plat town in conformity with the use and occupancy of the lots and blocks, and he cannot establish streets through and over buildings, nor cut off any portion or part of a building for street purposes. *Scully v. Squier*, 13 Idaho 417, 90 P. 573 (1907), *aff'd*, 215 U.S. 144, 30 S. Ct. 51, 54 L. Ed. 131 (1909).

Cited in: Robinson v. Lemp, 29 Idaho 661, 161 P. 1024 (1916).

58-803. Notice of entry. — At any time after the entry of such lands, and before three (3) months from the date of the receipt of a patent therefor,

the corporate authorities or judge entering the same, must give public notice of such entry by posting the notice thereof in at least three (3) public places in said town, and by publishing such notice in a newspaper printed and published in the county in which such town is situated, or in case there is no such newspaper, then in some newspaper printed and published at the seat of government; such notice must be published once in each week for at least three (3) successive weeks, and must contain the name of the town and an accurate description of the lands so entered as the same are described in the certificate of entry, duplicate receipt for the purchase money thereof issued at the time of entry, or in the patent in case patent has issued.

History.

1875, p. 698, § 3; R.S., § 2202; am. 1905, p.

84, § 2; reen. R.C. & C.L., § 2149; C.S., § 3766; I.C.A., § 56-703.

STATUTORY NOTES**Cross References.**

Expense of entry a charge on land, § 58-816.

58-804. Claims for lots. — Every person, association or company claiming to be entitled to such lands, or to any block, lot, share or parcel thereof, must, within sixty (60) days after the first publication of such notice, in person or by duly authorized agent or attorney, sign a statement in writing containing an accurate description of the particular parcel or parts in which he claims to have an interest, and the specified right, interest or estate therein, which he claims to be entitled to receive, also a brief statement of the facts upon which such right, interest or estate depends for its validity, and deliver the same to such corporate authorities or judge, and all persons failing to sign and deliver such statement, within the time specified in this section, are, as against any claimant, forever barred the right of claiming or recovering such lands, or any interest therein. In case any lots, pieces or parcels of land remain unclaimed and unconveyed at the end of said sixty (60) days, all such lots shall revert to and become the property of such town.

History.

1875, p. 698, § 4; R.S., § 2203; am. 1905, p.

84, § 3; reen. R.C. & C.L., § 2150; C.S., § 3767; I.C.A., § 56-704.

STATUTORY NOTES**Cross References.**

Expense of entry a charge on land, § 58-816.

Notice to commence suit, § 58-813.
Service of summons, § 58-814.

58-805. Appointment of appraisers. — The corporate authorities of such town, in case the same be incorporated, or otherwise, the judge, shall appoint, by order, resolution or ordinance, a board of appraisers, to consist of three (3) freeholders or householders of such town, who shall have no interest in such unclaimed or unconveyed lots or parcels of land, or the improvements thereof. Each of said appraisers shall take an oath to

faithfully discharge his duties as such appraiser, and shall file such oath in the office of the clerk of such municipality or county before commencing his duties as such appraiser. In case such appraisers should fail or neglect to make appraisements hereinafter specified and file the same with said clerk for a period of more than ten (10) days after their appointment, then said judge or corporate authorities may appoint a new board of appraisers for the purposes herein provided. It shall be the duty of such authorities to appoint such appraisers within thirty (30) days after the time has expired for persons to present claims for lots, pieces or parcels of land in such town.

History. C.L., § 2151; C.S., § 3768; I.C.A., § 56-705;
1905, p. 84, § 4; am. R.C., § 2151; reen. am. 1975, ch. 214, § 2, p. 594.

58-806. Appraisement of unclaimed lots. — Said appraisers shall appraise all lots, pieces or parcels of land, unclaimed or not conveyed by virtue of any law, in such town, at their just and full cash value, and file their written appraisement thereof with said clerk. Said appraisement shall contain a description of each lot, piece or parcel of land so appraised, and a statement of the cash value of the same. Said appraiser shall make a separate statement of the value of such lots, pieces and parcels of land without improvements, and the value of such improvements, and the aggregate value of both. There shall be attached to such appraisement a written affidavit of said appraisers verifying each statement of such appraisement and alleging that each of such lots and parcels of land is appraised at its just and full value. This appraisement shall be required only in cases where the time has expired by law for claimants to file their statements.

History.
1905, p. 84, § 5; reen. R.C. & C.L., § 2152;
C.S., § 3769; I.C.A., § 56-706.

58-807. Notice of sale. — The mayor or president of the board of trustees, or judge, as the case may be, shall, upon the filing of such appraisements, give notice signed in his official capacity of the time and place of sale of such lots and parcels of land by an advertisement published once a week for three (3) successive weeks in some newspaper published in the county where such town is situated, or, if no newspaper is published in said county, then in the paper published nearest such town. Such sale shall be advertised to be made at some public place in said town, and to be sold at some specified time between the hours of sunrise and sunset.

History. C.L., § 2153; C.S., § 3770; I.C.A., § 56-707;
1905, p. 84, § 6; am. R.C., § 2153; reen. am. 1975, ch. 214, § 3, p. 594.

58-808. Conduct of sale — Reappraisement and resale. — Such lots or parcels of land shall be sold at public vendue to the highest bidder for cash, and shall be offered for sale singly, unless a greater price can be obtained by selling several lots or parcels of land together, in which case several lots or parcels can be sold together after an attempt has been first

made to sell the same singly. Such sale may be continued, if necessary, from day to day, for a period not to exceed three (3) days at any one (1) sale. In case all said lands are not sold at the first sale, the sale of the remaining lands shall be advertised as many times as may be necessary to sell said lands, and all sales subsequent to the first sale shall be advertised and conducted the same as the first sale, provided, however, that the judge or corporate authorities may, when petitioned by a majority of the landowners in such town site, withhold from public sale and dedicate to public use such parcels of such town site as are appropriate for public use. No lot or parcel of land shall be sold at less than its appraised value. A new appraisement may be had of all lands remaining unsold: provided, that such new appraisement shall not be made oftener than once every three (3) months. Such new appraisement shall be made by a new board of appraisers, to be appointed in the same manner as the first board of appraisers were appointed, or by the old board of appraisers.

History.

1905, p. 84, § 7; am. R.C., § 2154; reen. C.L., § 2154; C.S., § 3771; I.C.A., § 56-708; am. 1975, ch. 214, § 4, p. 594.

58-809. Purchase by entryman. — In all cases where, subsequent to the time provided by law for persons to claim lots on such town site, any person may have entered thereon and improved any lots belonging to such town, such person, after the report of said board of appraisers, and prior to public sale, may purchase any such lots from the judge or corporate authorities of such town for cash, at the appraised values of such lots, pieces or parcels of land, inclusive of improvements, unless there shall be adverse claimants to any such lots, in which case the respective rights of such claimants shall be determined as hereinafter provided.

History.

1905, p. 84, § 8; reen. R.C. & C.L., § 2155; C.S., § 3772; I.C.A., § 56-709; am. 1975, ch. 214, § 5, p. 594.

58-810. Proceeds of sale. — The proceeds received from such sales shall be disposed of as follows:

1. They shall be applied to pay the expenses of said sale.
2. To discharge any outstanding claims incurred in entering the town site of said town.
3. The surplus, if any, shall be a special fund, to be held by such judge or corporate authorities, to be used in making public improvements in such town.

History.

1905, p. 84, § 9; reen. R.C. & C.L., § 2156; C.S., § 3773; I.C.A., § 56-710; am. 1975, ch. 214, § 6, p. 594.

58-811. Suits to determine adverse claims. — In case there shall be adverse claimants to such lands, or to any part, parcel or share thereof, either party may bring a suit against the adverse claimant or claimants, in the district court of the judicial district, in the county in which the land shall be situated: provided, that no judge of the district court who has been an adverse claimant, directly or indirectly, of any portion of the lands embraced

within such town, or who is a party to any action brought to determine the right to a conveyance of any portion of the lands within such town, shall entertain, hear or determine any action brought to determine any such claims, by or between any parties whomsoever; but in all such cases, if the cause shall be pending in a district court, the judge thereof shall order all papers, with a transcript of the record in said cause, to be transmitted to another judicial district, as in cases of change of venue: provided, that the laws applicable to a change of venue shall apply to actions brought under this chapter. Suits shall be brought against adverse claimants as defendants, and it shall not be necessary to make the district judge or corporate authorities parties thereto. The complaint must show what interest or estate in the lands in controversy the plaintiff claims.

History. 1875, p. 698, § 5; R.S., § 2204; am. 1905, p. 84, § 10; reen. R.C. & C.L., § 2157; C.S., § 3774; I.C.A., § 56-711.

STATUTORY NOTES

Compiler's Notes. The words "district judge" were substituted for "probate judge" on authority of Section 1 of S.L. 1969, ch. 100, p. 344, which provided that wherever the words "probate judge" shall appear in the Idaho Code they shall mean the "district judge or the magistrate of the district court."

58-812. First settler entitled to land. — Upon the trial in such action either party may give in evidence the statement mentioned in this chapter, deposited by the other, or by the person under whom he claims, with the corporate authorities or judge holding the title to the lands in controversy therein, and the person who made the first claim to, and settlement upon such lands, either in person or by agent, servant or tenant, or those claiming under him, must in such actions be deemed to have the right to such lands, provided there has been no abandonment thereof since such settlement.

History. 1875, p. 698, § 6; R.S., § 2205; reen. R.C. & C.L., § 2158; C.S., § 3775; I.C.A., § 56-712.

58-813. Notice to commence suit. — In case suits shall not be brought for the purpose of settling or determining any controversy to any such lands by either of the adverse claimants, within sixty (60) days after the expiration of the time for filing the statement as provided in section 58-804[, Idaho Code], it shall be the duty of the judge or corporate authorities to give notice to the adverse claimant last filing his claim, or if there be more than one adverse claim filed, then to the last adverse claimant, directing him to commence his action against the other claimants as defendants to determine their respective rights to said lands, within twenty (20) days from service of notice on him, and in case such adverse claimant neglects or refuses to commence the action within the time specified, he shall be deemed to have waived and relinquished all right, title, interest and estate in the lands so in controversy, and be forever barred from asserting or claiming any right, title, interest or estate therein. Such notice may be served by the sheriff of the county in which said town is situated, or by any person over the

age of twenty-one (21) years, and proof of such service may be made as in case of summons issued out of the district court. If the person or sheriff to whom said notice is given to serve, shows by affidavit or return that such adverse claimant can not be found in the county in which said lands are situated, service of such notice shall be by publication thereof for three (3) weeks in some newspaper published in the county where the lands are situated, and if no paper be published in said county, then by posting such notice in three (3) public places in the town where the lands are situate, and in addition thereto said notice shall be mailed to such adverse claimant at his residence or usual place of abode. In case there be more than one adverse claimant, and the last neglect or refuse to commence his action after service of notice as aforesaid, said judge or corporate authority shall serve like notice on the last adverse claimant until all have been notified as aforesaid. The provisions of this section shall apply to, and have the same effect of notice and forfeiture as against any adverse claimants to, lands and lots in town sites heretofore entered under said act of congress, after notice shall have been served as aforesaid.

History.

1875, p. 698, § 7; R.S., § 2206; am. 1905, p.

84, § 11; reen. R.C. & C.L., § 2159; C.S., § 3776; I.C.A., § 56-713.

STATUTORY NOTES**Cross References.**

Claims for lots, § 58-804.

Proof of service of summons, Idaho R. Civ. P. 4(d)(6).

Compiler's Notes.

The bracketed insertion in the first sentence was added by the compiler to conform to the statutory citation style.

58-814. Service of summons. — Whenever complaint shall be filed in any action as provided in this chapter, summons shall issue against the proper parties, and shall be served upon the proper person or persons named therein, as in other cases provided by law, or upon the agent or attorney of such person or persons who shall have filed the statements as required in section 58-804[, Idaho Code]; and in case service cannot be had upon the defendant, his agent or attorney, service may be made by publication thereof as provided by law.

History.

1905, p. 84, § 12; reen. R.C. & C.L., § 2160; C.S., § 3777; I.C.A., § 56-714.

STATUTORY NOTES**Compiler's Notes.**

The bracketed insertion was added by the

compiler to conform to the statutory citation style.

58-815. Conveyance of land in suit. — The corporate authorities or judge, as the case may be, shall convey said lands in accordance with the judgments entered in such actions: provided, however, in case of appeals or writs of error to the Supreme Court, such conveyance shall not be made until final determination by the decision of the Supreme Court.

History.

1905, p. 84, § 13; reen. R.C. & C.L., § 2161; C.S., § 3778; I.C.A., § 56-715; am. 1975, ch. 214, § 7, p. 594.

58-816. Expense of entry a charge on land. — As soon as may be after the expiration of sixty (60) days after the first publication of the notice mentioned in section 58-803[, Idaho Code], the corporate authorities or judge holding the title to the lands described in such notice must make a true statement in writing containing a true account of all moneys expended in the acquisition of the title and the administration or execution of the trust to that time, including all moneys paid for the purchase of such land, all necessary traveling expenses, all moneys paid for posting and publishing notices, and the proof thereof, all costs of surveys and platting such lands, all necessary attorneys' fees and costs of suit or actions necessarily prosecuted or defended in obtaining title to said lands, and for all other necessary and proper expenses incident to such trust, and also a true account of his time and service in the business of such trust to that time. The whole amount of such account for moneys so advanced, and reasonable charges for compensation as herein provided, is a charge upon the lands so held in trust, in favor of the trustee, and must be paid by the several claimants entitled to such lands who have filed their claims within the time mentioned in section 58-804[, Idaho Code], in proportion to the several quantities of shares thereof to which they are respectively entitled: provided, however, in incorporated cities or villages where the lands claimed are, owing to location, contour of surface or other causes, of different values, the city council, trustees or other legislative body of such city or village, may by ordinance fix the part or portion of the moneys so expended by such trustee and which are a charge against such lands, as herein provided, which shall be charged to each parcel of land, which shall be as near as may be in accordance with the relative values of the different parcels of land.

History.

R.S., § 2207; am. 1905, p. 84, § 14; reen. R.C. & C.L., § 2162; C.S., § 3779; I.C.A., § 56-716.

STATUTORY NOTES**Compiler's Notes.**

The bracketed insertions in the first and last sentences were added by the compiler to conform to the statutory citation style.

58-817. Tender of charges and fees. — Before the corporate authorities or judge holding any such lands in trust as aforesaid can be required to execute, acknowledge or deliver any conveyance thereof, or of any lot, block, parcel or share thereof, as hereinbefore mentioned, to any person claiming to be entitled to such conveyance, such person must pay or tender the sum of money chargeable upon the part thereof to be conveyed according to the statement or account mentioned in the last section, together with interest on each of the money items of such account at the rate of 24 per cent per annum from the time when the same accrued, and also such further sums as are a reasonable compensation for preparing, executing and acknowledging such conveyance, and the fees of the officer taking the acknowledgment thereof.

History.

1875, p. 698, § 9; am. R.S., § 2208; am. R.C., § 2163; reen. C.L., § 2163; C.S., § 3780; I.C.A., § 56-717.

58-818. Conveyance to claimants. — After the expiration of sixty (60) days from the time of the first publication of the notice, the corporate authorities or judge holding the title to the lands described therein, must, upon a reasonable demand or request, and upon the payment or tender of the moneys mentioned in the last preceding section [58-817, Idaho Code], execute, acknowledge and deliver to each and every claimant, association or company of claimants of such lands, or of any lot, block, parcel or share thereof, a conveyance thereof, according to the statement made and deposited as aforesaid: provided, that no such conveyance must be executed, acknowledged or delivered for any part, lot, block or share of such lands to which there are adverse claimants, until the controversy thereon is settled or determined in the manner hereinbefore prescribed, and whenever any such controversy is so settled or determined, the said corporate authorities or judge must, upon the like demand or request, and the like payment or tender, convey the land, or interest, or share therein, the right to which has been thus ascertained, to the person thereby determined to be entitled to the same.

History.

1875, p. 698, § 10; am. R.S., § 2209; reen. R.C. & C.L., § 2164; C.S., § 3781; I.C.A., § 56-718.

STATUTORY NOTES**Compiler's Notes.**

The bracketed insertion was added by the compiler to clarify the reference in the text.

58-819. Rights of trustee as claimant. — In case any judge or other officer who enters any such lands under the provisions of the acts of congress and thus becomes the sole trustee thereof, is possessed of, or entitled to, any part, lot, block or share thereof, according to and by virtue of the provisions of this chapter, and the same is not claimed adversely to him by any person, he is seized and possessed of the title thereto and estate therein to his own use in fee simple, absolute, free and discharged of such trust, and no conveyance other than the patent of the lands including the same is necessary to perfect his absolute title thereto. In case any such land or share therein so claimed by said judge or other officer, is claimed by any other person adversely to him, the conflicting claims must be adjusted or determined by settlement, arbitration or action as hereinbefore prescribed.

History.

1875, p. 698, § 11; am. R.S., § 2210; am. R.C., § 2165; reen. C.L., § 2165; C.S., § 3782; I.C.A., § 56-719.

58-820. Trustee holds title from entry. — For the purpose of determining the rights of adverse claimants to any land so entered, the corporate authorities or judge hereinbefore mentioned is deemed to possess and hold the title to such lands in trust from the time of the entry thereof.

History.

1875, p. 698, § 12; reen. R.S., § 2211; reen.

R.C. & C.L., § 2166; C.S., § 3783; I.C.A.,
§ 56-720.

58-821. Costs of suit. — The costs in the actions mentioned in this chapter are recoverable as in other civil actions.

History.

1875, p. 698, § 13; am. R.S., § 2212; reen.

R.C. & C.L., § 2167; C.S., § 3784; I.C.A.,
§ 56-721.**STATUTORY NOTES****Cross References.**

Costs in civil actions, § 12-101 et seq.

58-822. Contracts for conveyance. — Every person in whom the title to any lands is vested under and by the provisions of this chapter may be compelled to specifically perform any prior valid agreement for a conveyance.

History.

1875, p. 698, § 14; R.S., § 2213; reen. R.C.

& C.L., § 2168; C.S., § 3785; I.C.A., § 56-
722.

58-823. Successor in office succeeds to trust. — The successor in office of any judge, mayor or other officer who entered lands under said laws of the United States, or who was trustee for the execution of the trust in that behalf, whether such officer or trustee acted under this chapter, or under any other general law, or any local or special act relating to any city or incorporated town, shall succeed to the trust, and shall have authority to execute the same as fully as his predecessor, the original trustee, might have done while in office; and when a mayor's or other trustee's deed of any block, lot, share or parcel of any such town site has been lost or can not be found, and there is no record thereof in the office of the county recorder, such successor, upon application to him in writing, duly verified, showing that no mayor's or other trustee's deed can be found to the part or parcel of such town site described in the application, and that no such deed thereto is of record in the office of the recorder of the county, and that the applicant, his ancestor, predecessor or grantor has been in the quiet, peaceable and undisturbed possession of said premises under claim of title for the full period of five (5) years next before the application, must, by good and sufficient conveyance, grant and convey the title of the premises described in the application to the applicant, which conveyance must be executed and acknowledged, and shall take and have effect as provided by section 58-802[, Idaho Code], for which and the acknowledgment thereof the trustee shall be entitled to receive a fee of five dollars (\$5.00) from the applicant: provided, that in every such application for a deed under the provisions of this section, where an adverse claim to such parcel of said town site shall be made to such mayor for the same, the mayor in every such case shall remit the parties claiming deeds to the same to a court of competent jurisdiction to settle the same, and when so determined, then the said mayor shall execute such deed to the prevailing party.

History.

1875, p. 698, § 15; R.S., § 2214; am. 1890-1891, p. 201, § 1; reen. 1899, p. 141, § 1; am.

R.C., § 2169; reen. C.L., § 2169; C.S., § 3786; I.C.A., § 56-723.

STATUTORY NOTES**Compiler's Notes.**

The bracketed insertion near the end of this

section was added by the compiler to conform to the statutory citation style.

JUDICIAL DECISIONS

Cited in: Robinson v. Lemp, 29 Idaho 661, 161 P. 1024 (1916).

CHAPTER 9**POSSESSORY ACTIONS FOR PUBLIC LANDS****SECTION.**

58-901. Actions to protect possessory rights.
58-902. Claim — What to contain.
58-903. Claim — Notice — Affidavit — Recording.

SECTION.

58-904. Improvement, cultivation and residence.
58-905. Actions — Proof of improvements.

58-901. Actions to protect possessory rights. — Any person being a citizen of the United States or having in accordance with law declared his intention to become a citizen, occupying and settled upon any of the public lands of the United States in this state for the purpose of cultivating or grazing the same, may commence and maintain any action for interference with, or injury to his possession of such land, against any person interfering with or injuring the same; but if such land contains mines of any of the precious metals, the possession or claim of the person occupying the same for the purposes aforesaid must not prevent the working of such mines by persons desiring to work the same, as fully as if no such claim for agricultural or grazing purposes had been made thereon: provided, that this chapter must not be so construed as to allow a person, subsequent to the location of land for agricultural or grazing purposes, to go upon such lands for the purpose of mining without first paying the owner thereof the value of any growing crops he may destroy; this provision does not extend to any crops planted subsequent to their location for mining purposes; and this chapter must not be construed to authorize the maintenance of any claim upon lands which, at the commencement of any such action, may have been selected by the United States and reserved for any purpose.

History.

Comp. Laws 1875, p. 751; R.S., R.C., & C.L., § 4552; C.S., § 6971; I.C.A., § 56-801.

STATUTORY NOTES**Cross References.**

Escheated estates as part of public school fund, § 33-902.

Escheated property, heir cannot be located, part of public school permanent endowment fund, § 15-3-914.

JUDICIAL DECISIONS

ANALYSIS

Abandonment.

Application.

Application for entry.

Necessity of occupancy.

Abandonment.

Possession and compliance with this and following sections being shown, abandonment thereof must be made to appear conclusively by party relying on it to defeat right of claimant to have his possession in the land quieted. *Goldensmith v. Snowstorm Mining Co.*, 28 Idaho 403, 154 P. 968 (1916).

Temporary absence from a homestead selected under this section and following sections to obtain a livelihood or for other legitimate reason is not of itself sufficient to establish abandonment. *Goldensmith v. Snowstorm Mining Co.*, 28 Idaho 403, 154 P. 968 (1916).

Application.

This chapter gives right of action to recover public lands not inclosed and cultivated and has no application to action to determine respective rights and priorities of parties to use of waters of creek. *Hall v. Blackman*, 8 Idaho 272, 68 P. 19 (1902).

Application for Entry.

One attacking right to unsurveyed land claimed under this section cannot raise question of claimant's failure to apply to local land office of the United States for entry under the homestead laws after same was surveyed by the government. *Goldensmith v. Snowstorm Mining Co.*, 28 Idaho 403, 154 P. 968 (1916).

Necessity of Occupancy.

Action to quiet title to land which is a part of the public domain cannot be maintained where neither plaintiff nor his predecessor in interest has ever occupied land or filed a possessory claim thereto as provided by this section. *Branca v. Ferrin*, 10 Idaho 239, 77 P. 636 (1904).

Cited in: *Brose v. Boise City Ry. & Term. Co.*, 5 Idaho 694, 51 P. 753 (1897); *Cheney v. Minidoka County*, 26 Idaho 471, 144 P. 343 (1914); *Denney v. Arritola*, 31 Idaho 428, 174 P. 135 (1918).

RESEARCH REFERENCES

Am. Jur. — 53A Am. Jur. 2d, Mines and Minerals, § 39.

63C Am. Jur. 2d, Public Lands, § 45 et seq.

C.J.S. — 73A C.J.S., Public Lands, § 45 et seq.

58-902. Claim — What to contain. — Every claim, to enable the holder to maintain any action as aforesaid, must contain not more than 160 acres of land, to be in compact form, and so distinctly marked that the boundaries thereof may be easily traced: provided, that when the United States government has set aside any tract of land subject to homestead entry of not more than 320 acres in such homestead, each claim under the provisions of this chapter may contain 320 acres.

History.

1875, p. 752; R.S. & R.C., § 4553; am. 1913,

ch. 102, § 1, p. 422; reen. C.L., § 4553; C.S., § 6972; I.C.A., § 56-802.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Lands, § 103 et seq.

58-903. Claim — Notice — Affidavit — Recording. — Every such claim must be accurately described in a written notice, which must be recorded in the office of the recorder of the county wherein the claim is

situated, in a book to be kept for that purpose, together with an affidavit of the claimant setting forth:

1. That such claim does not embrace more than 320 acres of land.
2. That he holds no other claim under the provisions of this chapter.
3. That to the best of his information and belief, no part of said land is claimed under any existing adverse title.

History.

1875, p. 752; R.S. & R.C., § 4554; am. 1913, ch. 102, § 2, p. 423; reen. C.L., § 4554; C.S., § 6973; I.C.A., § 56-803.

JUDICIAL DECISIONS

Homestead Distinguished.

There is a clear distinction between a "possessory right" which is initiated and made good by occupancy and settlement and filing a notice thereof as required by this section, and the right which accrues to a person through the making of a formal homestead or other

entry of the land under the laws of the United States, since when the public land is surveyed by the government and filed upon by a qualified entryman in the usual way, it ceases to be public land. *Cheney v. Minidoka County*, 26 Idaho 471, 144 P. 343 (1914).

58-904. Improvement, cultivation and residence. — Within ninety (90) days after the date of such record said claimant must improve the land so recorded, unless the same has been previously improved by him or some one through whom he claims, by putting such improvements thereon as partake of the realty to the value of \$200, and must continue to occupy and cultivate or graze the same or some portion thereof, either in person or by his agent or employee, and no person is entitled to maintain any such action unless he has complied with all the provisions of this chapter.

History.

1875, p. 752; R.S., R.C., & C.L., § 4555; C.S., § 6974; I.C.A., § 56-804.

JUDICIAL DECISIONS

Cited in: *Goldensmith v. Snowstorm Mining Co.*, 28 Idaho 403, 154 P. 968 (1916).

58-905. Actions — Proof of improvements. — In any action for the possession of, or for any injury done to, a lot or parcel of land, situated in any city, town or village on the public lands, the plaintiff must be required to prove either an actual inclosure of the whole lot claimed by him, or the erection of a dwelling house or other substantial building on some part thereof, by himself or some person through whom he claims, and proof of such building, with or without inclosure, is sufficient to hold such lot or parcel to the bounds thereof, as indicated by the plat of such city, town or village, if there be one, and if there be no such plat, then to hold the same, with its full width and extent from and including such building to the nearest adjacent street, where the intervening space has not been previously claimed by adverse possession.

History.

1875, p. 752; R.S., R.C., & C.L., § 4556;
C.S., § 6975; I.C.A., § 56-805.

JUDICIAL DECISIONS**Nature of Action.**

Action under provisions of this section to recover possession of premises located in the public domain is not an action of ejectment, nor do the rules governing common-law actions of ejectment apply to cases of this character, as the action is purely statutory. *Maydole v. Watson*, 7 Idaho 66, 60 P. 86 (1900).

Cited in: *Carter v. Ruddy*, 166 U.S. 493, 41 L. Ed. 1090, 17 S. Ct. 640 (1897); *Brose v. Boise City Ry. & Term. Co.*, 5 Idaho 694, 51 P. 753 (1897); *Hall v. Blackman*, 8 Idaho 272, 68 P. 19 (1902).

CHAPTER 10**TIMBER SUPPLY STABILIZATION****SECTION.**

58-1001 — 58-1008. [Repealed.]

58-1001. Short title. [Repealed.]

Repealed by S.L. 2010, ch. 60, § 1, effective July 1, 2010.

History.

I.C., § 58-1001, as added by 1989, ch. 420, § 1, p. 1024.

STATUTORY NOTES**Prior Laws.**

Former §§ 58-1001 to 58-1007, which comprised S.L. 1969, ch. 297, §§ 1 to 7; am. 1969,

ch. 328, §§ 1, 2, concerning state commission on federal land laws, were repealed by S.L. 1972, ch. 205, § 1.

58-1002. Legislative findings and purposes. [Repealed.]

Repealed by S.L. 2010, ch. 60, § 1, effective July 1, 2010.

History.

I.C., § 58-1002, as added by 1989, ch. 420, § 1, p. 1024.

STATUTORY NOTES**Prior Laws.**

Former § 58-1002 was repealed. See Prior Laws, § 58-1001.

58-1003. Definitions. [Repealed.]

Repealed by S.L. 2010, ch. 60, § 1, effective July 1, 2010.

History.

I.C., § 58-1003, as added by 1989, ch. 420, § 1, p. 1024.

STATUTORY NOTES**Prior Laws.**

Former § 58-1003 was repealed. See Prior Laws, § 58-1001.

58-1004. Sale of state timber. [Repealed.]

Repealed by S.L. 2010, ch. 60, § 1, effective July 1, 2010.

History.

I.C., § 58-1004, as added by 1989, ch. 420, § 1, p 1024.

STATUTORY NOTES**Prior Laws.**

Former § 58-1004 was repealed. See Prior Laws, § 58-1001.

58-1005. Certification and approval of bidders prior to bidding. [Repealed.]

Repealed by S.L. 2010, ch. 60, § 1, effective July 1, 2010.

History.

I.C., § 58-1005, as added by 1989, ch. 420, § 1, p. 1024; am. 1990, ch. 213, § 89, p. 480.

STATUTORY NOTES**Prior Laws.**

Former § 58-1005 was repealed. See Prior Laws, § 58-1001.

58-1006. Removal from list of certified bidders. [Repealed.]

Repealed by S.L. 2010, ch. 60, § 1, effective July 1, 2010.

History.

I.C., § 58-1006, as added by 1989, ch. 420, § 1, p. 1024.

STATUTORY NOTES**Prior Laws.**

Former § 58-1006 was repealed. See Prior Laws, § 58-1001.

58-1007. Implementation of this chapter. [Repealed.]

Repealed by S.L. 2010, ch. 60, § 1, effective July 1, 2010.

History.

I.C., § 58-1007, as added by 1989, ch. 420, § 1, p. 1024.

STATUTORY NOTES

Prior Laws.

Former § 58-1007 was repealed. See Prior Laws, § 58-1001.

58-1008. Severability. [Repealed.]

Repealed by S.L. 2010, ch. 60, § 1, effective July 1, 2010.

History.

I.C., § 58-1008, as added by 1989, ch. 420, § 1, p. 1024.

CHAPTER 11

REAL PROPERTY ACQUISITION

SECTION.

58-1101. Short title.

58-1102. Definitions.

58-1103. Acquisition of improvements adversely affected by use of real property acquired — Rights of tenants — Alternate modes of payment — Rights under other laws saved.

58-1104. Unsuccessful or abandoned eminent

SECTION.

domain proceeding — Award of litigation expense.

58-1105. Action by owner for taking of property — Award of expenses of litigation.

58-1106. Owner left with uneconomic or landlocked remnant — Acquisition of whole tract.

58-1101. Short title. — This act shall be known as the “Idaho Real Property Acquisition Act of 1971.”

History.

1971, ch. 158, § 1, p. 774.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 1971, ch.

158, which is compiled as §§ 58-1101 to 58-1106.

58-1102. Definitions. — As used in this act:

(a) “Owner” means any individual, family, business, corporation, partnership, association, or farm operation having any right, title or interest in property which is acquired, condemned, or sought to be acquired or condemned by a department or an agency as defined in this act.

(b) “Department” means the division of highways of the department of transportation of the state of Idaho.

(c) “Political subdivision” means any local unit or agency of government of the state of Idaho, and includes but is not limited to good roads districts, highway districts, cities and counties.

(d) “Agency” means any department, agency or instrumentality of the state of Idaho or of any political subdivision thereof which is financed in whole or in part by funds furnished by the federal government and which is authorized by the laws of the state of Idaho to acquire property by eminent domain.

(e) "Business" means any lawful activity, excepting a farm operation, conducted primarily for the purchase, sale, resale, lease and rental of personal property and real property, and for the manufacture, processing or marketing of products, commodities, or any other personal property; or for the sale of services to the public; or by a nonprofit organization or corporation.

(f) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

History.

1971, ch. 158, § 2, p. 774.

STATUTORY NOTES

Compiler's Notes.

For more on the division of highways in the transportation department, see <http://itd.idaho.gov/highways>.

The name of the "department of transportation" in subsection (b) was changed to "division of highways of the department of transportation" on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 12, § 2 (§ 40-111).

However, in 1985 § 40-111 was repealed by S.L. 1985, ch. 253, which act completely recodified Title 40, Highways and Bridges. For present law see § 40-501.

The term "this act" in the introductory paragraph and in subsection (a) refers to S.L. 1971, ch. 158, which is compiled as §§ 58-1101 to 58-1106.

58-1103. Acquisition of improvements adversely affected by use of real property acquired — Rights of tenants — Alternate modes of payment — Rights under other laws saved. — (a) Notwithstanding any other provision of the laws of this state, if the department, a political subdivision, or an agency acquires any interest in real property, it may acquire at least an equal interest in all buildings, structures, or other improvements located on the real property so acquired and which it determines will be adversely affected by the use to which such real property will be put.

(b) For the purpose of determining just compensation to be paid for any building, structure, or other improvement acquired under subsection (a) of this section, such building, structure, or other improvement may be deemed to be a part of the real property to be acquired, notwithstanding the right or obligation of a tenant as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term.

(c) The tenant may be paid the greater of (1) the fair market value of the building, structure, or improvement which the building, structure, or improvement contributes to the fair market value of the real property to be acquired, or (2) the fair market value of the building, structure, or improvement when its removal is considered in the appraisal.

(d) Payment under subsection (b) or (c) of this section shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in

the improvements of the tenant. In consideration of any such payment, the tenant shall assign, transfer, and release to the department, political subdivision, or agency all his right, title, and interest in and to such improvements.

(e) Nothing contained in subsections (b), (c), or (d) of this section shall be construed to deprive the tenant of any rights to reject payment under subsections (b), (c), or (d) of this section and to obtain payment for such property interest in accordance with applicable law.

History.

1971, ch. 158, § 3, p. 774.

58-1104. Unsuccessful or abandoned eminent domain proceeding — Award of litigation expense. — Should the court having jurisdiction of an eminent domain proceeding brought by the department, a political subdivision, or an agency seeking condemnation of an owner's property render judgment that the department, political subdivision, or agency may not acquire the property by condemnation or should the proceeding be abandoned by the department, political subdivision, or agency, the court may award or the department, political subdivision, or agency may pay the owner of the real property such sum as will in the opinion of the court or the department, political subdivision, or agency reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceeding.

History.

1971, ch. 158, § 4, p. 774.

58-1105. Action by owner for taking of property — Award of expenses of litigation. — Should an owner of real property be required to bring an action against the department, a political subdivision, or an agency for the taking of real property by such department, political subdivision, or agency, and prevail in such action, the court may award, or the department, political subdivision, or agency may pay, the plaintiff such sum as will in the opinion of the court or the department, political subdivision, or agency reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the proceeding.

History.

1971, ch. 158, § 5, p. 774.

RESEARCH REFERENCES

Am. Jur. — 26 Am. Jur. 2d, Eminent Domain, §§ 402 to 413.

58-1106. Owner left with uneconomic or landlocked remnant — Acquisition of whole tract. — When the acquisition of real property by the department, political subdivision, or agency would leave the owner with

an uneconomic remnant or a landlocked tract of land, the department, political subdivision, or agency may acquire by purchase or eminent domain the uneconomic remnant, the landlocked tract, or the whole of the real property affected by the acquisition.

History.

1971, ch. 158, § 6, p. 774.

STATUTORY NOTES**Effective Dates.**

Section 7 of S.L. 1971, ch. 158 declared an emergency. Approved March 20, 1971.

RESEARCH REFERENCES

Am. Jur. — 26 Am. Jur. 2d, Eminent Domain, § 271 et seq.

CHAPTER 12

PUBLIC TRUST DOCTRINE

SECTION.

58-1201. Findings.

58-1202. Definitions.

SECTION.

58-1203. Limitations to the application of the public trust doctrine.

58-1201. Findings. — The legislature hereby finds and declares:

(1) Upon admission of the state of Idaho into the union, the title to the beds of navigable waters became state property, and subject to its jurisdiction and disposal under the equal footing doctrine. According to the United States supreme court's decision in *Shively v. Bowlby*, the state has the right to dispose of the beds of navigable waters, "in such manner as [it] might deem proper,... subject only to the paramount right of navigation and commerce." The state has the right to determine for itself "to what extent it will preserve its rights of ownership in them, or confer them on others," *Shively v. Bowlby*, 152 U.S. 1, 56 (1893); and

(2) Since the admission of the state of Idaho into the union, article XV of the constitution of the state of Idaho has governed the appropriation and use of the waters of Idaho. Pursuant to article XV of the constitution of the state of Idaho, the legislature of the state of Idaho has enacted a comprehensive system of laws for the appropriation, transfer and use of the waters of Idaho, which addresses the public interest therein; and

(3) Upon admission of the state of Idaho into the union, the state was granted certain lands by the United States government as an endowment for designated institutions. Article IX of the constitution of the state of Idaho, and laws enacted pursuant thereto, establish a comprehensive system of laws for the management of state endowment lands, which addresses the public interest therein; and

(4) The common law doctrine known as the public trust doctrine, adopted by inference in section 73-116, Idaho Code, has guided the alienation or encumbrance of the title to the beds of navigable waters held in trust by the

state. The public trust doctrine has been cited in court decisions and pleadings in ways that have created confusion in the administration and management of the waters and endowment lands; and

(5) The public's interest in the environment is protected in other parts of Idaho's constitutional or statutory law; and

(6) The purpose of this act is to clarify the application of the public trust doctrine in the state of Idaho and to expressly declare the limits of this common law doctrine in accordance with the authority recognized in each state to define the extent of the common law.

History.

I.C., § 58-1201, as added by 1996, ch. 342,
§ 1, p. 1147.

STATUTORY NOTES

Compiler's Notes.

The term "this act" in subsection (6) refers to S.L. 1996, ch. 342, which is codified as §§ 58-1201 to 58-1203.

The date "1893" enclosed in parentheses so appeared in the law as enacted.

58-1202. Definitions. — For the purposes of this chapter, the following definitions apply:

(1) "Beds of navigable waters" means those lands lying under or below the "natural or ordinary high water mark" of navigable waters.

(2) "Natural or ordinary high water mark" means the line that water impresses on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. When the soil, configuration of the surface, or vegetation has been altered by man's activity, the natural or ordinary high water mark shall be located where it would have been if no alteration had occurred.

(3) "Navigable waters" means those waters that were susceptible to being used, in their ordinary condition, as highways for commerce on the date of statehood, under the federal test of navigability.

(4) "Private property rights" means the property rights located above the beds of navigable waters.

(5) "Public trust doctrine" means the common law rule relating to the title to the beds of navigable waters adopted by inference in section 73-116, Idaho Code.

History.

I.C., § 58-1202, as added by 1996, ch. 342,
§ 1, p. 1147.

58-1203. Limitations to the application of the public trust doctrine. — (1) The public trust doctrine as it is applied in the state of Idaho is solely a limitation on the power of the state to alienate or encumber the title to the beds of navigable waters as defined in this chapter. The state board of land commissioners may approve, modify or reject all activities involving the alienation or encumbrance of the beds of navigable waters in accordance with the public trust doctrine.

(2) The public trust doctrine shall not be applied to any purpose other than as provided in this chapter. Specifically, but without limitation, the public trust doctrine shall not apply to:

(a) The management or disposition of lands held for the benefit of the endowed institutions as set forth in article IX of the constitution of the state of Idaho;

(b) The appropriation or use of water, or the granting, transfer, administration, or adjudication of water or water rights as provided for in article XV of the constitution of the state of Idaho and title 42, Idaho Code, or any other procedure or law applicable to water rights in the state of Idaho; or

(c) The protection or exercise of private property rights within the state of Idaho.

(3) Nothing in this chapter shall be construed as a limitation on the power of the state to authorize public or private use, encumbrance or alienation of the title to the beds of navigable waters held in public trust pursuant to this chapter for such purposes as navigation, commerce, recreation, agriculture, mining, forestry, or other uses, if, in the judgment of the state board of land commissioners, the grant for such use is made in accordance with the statutes and constitution of the state of Idaho.

(4) Nothing in this chapter shall be construed as repealing, limiting, or otherwise altering any statutory or constitutional provision of the state of Idaho including, but not limited to: title 42, Idaho Code, concerning the appropriation, transfer and use of the waters of Idaho; title 36, Idaho Code, concerning the regulation and management of fish and game and the right of public access on navigable waters; title 58, Idaho Code, relating to state lands and navigational encroachments; or chapter 43, title 67, Idaho Code, concerning the appropriation of waters in trust by the state of Idaho.

History.

I.C., § 58-1203, as added by 1996, ch. 342,
§ 1, p. 1147.

CHAPTER 13

NAVIGATIONAL ENCROACHMENTS

SECTION.

- 58-1301. Encroachment on navigable lakes — Legislative intent.
- 58-1302. Encroachment on navigable lakes — Definitions.
- 58-1303. Encroachment on navigable lakes — Powers of state land board.
- 58-1304. Encroachment on navigable lakes — Rules and regulations.
- 58-1305. Noncommercial navigational encroachments — Procedures — Repairs — Forms.
- 58-1306. Nonnavigational or commercial navigational encroachments — Community navigational encroachments — Navigational encroachments beyond

SECTION.

- line of navigability — Application — Procedures — Publication of notice — Hearing — Appeals — Reconsideration — Criteria priority.
- 58-1307. Fees for specified permits — Costs of publication.
- 58-1308. Penalty for violation — Injunctive relief.
- 58-1309. Restoration — Mitigation of damages.
- 58-1310. Existing rights unaffected.
- 58-1311. Disclaimer of state property rights in private lands.
- 58-1312. Permitting of existing encroachments.

58-1301. Encroachment on navigable lakes — Legislative intent. — The legislature of the state of Idaho hereby declares that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds or waters of navigable lakes of the state be regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment. No encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefor has been given as provided in this act.

History. § 1, p. 1608; am. and redesign. 1990, ch. 362,
I.C., § 58-142, as added by 1974, ch. 243, § 1, p. 979.

STATUTORY NOTES

Compiler's Notes. The terms "this act" at the end of the
This section was formerly compiled as § 58-142. section refers to S.L. 1974, ch. 243, which is codified as §§ 58-1301 to 58-1312.

JUDICIAL DECISIONS

ANALYSIS

Effective date.
Interpretation.
Permits.

Effective Date.

Where a dispute over the construction of a fish farm in a navigable estuary arose prior to the effective date of this section, the section would not be applicable even if the waters in the estuary were relatively still or slack. *Ritter v. Standal*, 98 Idaho 446, 566 P.2d 769 (1977).

Interpretation.

The court would not construe the statute to require that litigation concerning encroachments, which was under way at the time the act became effective, must be transferred from the courts to the state board of land commissioners, even though it would require that all other cases be initiated in the administrative agency rather than the courts. *Ritter v. Standal*, 98 Idaho 446, 566 P.2d 769 (1977).

Permits.

Landowners failed to exhaust their administrative remedies when they applied for a permit to build a dock. The lake protection act allowed the Idaho department of lands to determine littoral rights; the landowners were obligated by § 58-1305(b) to either obtain written consent from the adjoining property owners or provide notice of their permit application before the department could issue a permit. *Lovitt v. Robideaux*, 139 Idaho 322, 78 P.3d 389 (2003).

Cited in: *Kootenai Env'tl. Alliance, Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 671 P.2d 1085 (1983); *Idaho Forest Indus., Inc. v. Hayden Lake Watershed Imp. Dist.*, 112 Idaho 512, 733 P.2d 733 (1987).

OPINIONS OF ATTORNEY GENERAL

Although authorized generally to establish lake encroachments by the lake protection zoning ordinances under the local planning act, a county is preempted from regulating act. OAG 83-6.

58-1302. Encroachment on navigable lakes — Definitions. — (a) "Navigable lake" means any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere

marsh or stream eddy, and capable of accommodating boats or canoes. This definition does not include man-made reservoirs where the jurisdiction thereof is asserted and exclusively assumed by a federal agency.

(b) "Beds of navigable lakes" means the lands lying under or below the "natural or ordinary high water mark" of a navigable lake and, for purposes of this act only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one.

(c) "Natural or ordinary high water mark" means the high water elevation in a lake over a period of years, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes.

(d) "Artificial high water mark" means the high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line.

(e) "Low water mark" means that line or elevation on the bed of the lake marked or located by the average low water elevations over a period of years and marks the point to which the riparian rights of adjoining landowners extend as a matter of right, in aid of their right to use the waters of the lake for purposes of navigation.

(f) "Riparian or littoral rights" means only the rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake.

(g) "Line of navigability" means a line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question.

(h) "Encroachments in aid of navigation" means and includes docks, piers, floats, pilings, breakwaters, boat ramps, channels or basins, and other such aids to the navigability of the lake, on, in or above the beds or waters of a navigable lake. The term "encroachments in aid of navigation" may be used interchangeably herein with the term "navigational encroachments."

(i) "Encroachments not in aid of navigation" means and includes all other encroachments on, in or above the beds or waters of a navigable lake, including landfills or other structures not constructed primarily for use in aid of the navigability of the lake. The term "encroachments not in aid of navigation" may be used interchangeably herein with the term "nonnavigational encroachments."

(j) "Board" means the board of land commissioners of the state of Idaho or its authorized representative.

(k) "Plans" means maps, sketches, engineering drawings, aerial and other photographs, word descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same.

History.

I.C., § 58-143, as added by 1974, ch. 243, § 2, p. 1608; am. and redesisg. 1990, ch. 362,

§ 2, p. 979; am. 2006, ch. 111, § 1, p. 305; am. 2006, ch. 134, § 1, p. 389.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 58-143.

The terms "this act" in subsection (b) refers to S.L. 1974, ch. 243, which is codified as §§ 58-1301 to 58-1312.

Amendments.

This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 111, in subsec-

tion (a), inserted "including man-made reservoirs" in the first sentence and substituted "This definition does not include man-made reservoirs" for "except" in the second sentence.

The 2006 amendment, by ch. 134, rewrote subsection (g), which formerly read: "Line of navigability" means a line located at such distance below the low water mark as will afford sufficient draft for water craft customarily in use on that particular lake."

JUDICIAL DECISIONS**Littoral Boundary Established.**

There was a reasonable basis for concluding that a verdict in a prior litigation determined the littoral boundaries of the properties at issue, collaterally estopping the landowner from relitigating the issue of littoral rights under subsection (f) of this section. The Idaho department of lands adequately weighed the evidence, measuring the impact of an amended encroachment permit against the

possible damage to a landowner's property, and there was nothing improper in the conclusion that the encroachment benefits outweighed the adverse effects on the landowner. *Brett v. Eleventh St. Dockowner's Ass'n*, 141 Idaho 517, 112 P.3d 805 (2005).

Cited in: *Ritter v. Standal*, 98 Idaho 446, 566 P.2d 769 (1977); *Lovitt v. Robideaux*, 139 Idaho 322, 78 P.3d 389 (2003).

58-1303. Encroachment on navigable lakes — Powers of state land board. — The board of land commissioners shall regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds or waters of navigable lakes as provided herein.

History.

I.C., § 58-144, as added by 1974, ch. 243,

§ 3, p. 1608; am. and redesisg. 1990, ch. 362, § 3, p. 979.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 58-144.

JUDICIAL DECISIONS**Permits.**

Landowners failed to exhaust their administrative remedies when they applied for a permit to build a dock. The lake protection act allowed the Idaho department of lands to determine littoral rights; the landowners were obligated by § 58-1305(b) to either obtain written consent from the adjoining property owners or provide notice of their permit

application before the department could issue a permit. *Lovitt v. Robideaux*, 139 Idaho 322, 78 P.3d 389 (2003).

Cited in: *Ritter v. Standal*, 98 Idaho 446, 566 P.2d 769 (1977); *Kootenai Eenvtl. Alliance, Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 671 P.2d 1085 (1983).

OPINIONS OF ATTORNEY GENERAL

Although authorized generally to establish zoning ordinances under the local planning act, a county is preempted from regulating

lake encroachments by the lake protection act. OAG 83-6.

58-1304. Encroachment on navigable lakes — Rules and regulations. — The board may adopt, revise and rescind such rules and regulations and issue such general orders as may be necessary to effectuate the purposes and policy of this chapter within the limitations and standards set forth in this chapter. Rules, regulations and orders adopted or issued pursuant to this section may include, but are not limited to, minimum standards to govern projects or activities for which a permit or permits have been received under this chapter and regulations governing procedures for processing applications and issuing permits under this chapter. Minimum standards shall not be adopted pursuant to this section until after they have been offered for review and comment to other state agencies having an interest in activities regulated under this chapter. Any standards, rules, regulations and general orders adopted or issued pursuant to this section shall be promulgated in accordance with the provisions of chapter 52, title 67, Idaho Code, to the extent that the provisions of chapter 52, title 67, Idaho Code, are not inconsistent herewith.

History.

I.C., § 58-145, as added by 1974, ch. 243,

§ 4, p. 1608; am. and redesign. 1990, ch. 362,

§ 4, p. 979.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 58-145.

JUDICIAL DECISIONS

Cited in: Kootenai Envtl. Alliance, Inc. v. Panhandle Yacht Club, Inc., 105 Idaho 622, 671 P.2d 1085 (1983).

OPINIONS OF ATTORNEY GENERAL

Although authorized generally to establish zoning ordinances under the local planning act, a county is preempted from regulating

lake encroachments by the lake protection act. OAG 83-6.

58-1305. Noncommercial navigational encroachments — Procedures — Repairs — Forms. — (a) Applications for construction or enlargement of navigational encroachments not extending beyond the line of navigability nor intended primarily for commercial or community use shall be processed by the board with a minimum of procedural requirements and shall not be denied nor appearance required except in the most unusual of circumstances or if the proposed encroachment infringes upon or it appears it may infringe upon the riparian or littoral rights of an adjacent property owner.

(b) If the plans of the proposed encroachment indicate such infringement will or may occur, the board shall require that the applicant secure the consent of such adjacent owner or that he be given notice of the application by personal service or by certified or registered mail, return receipt requested, directed to him at his usual place of address, which, if not otherwise known, shall be the address shown on the records of the county treasurer or assessor, and such adjacent owner shall have ten (10) days from the date of personal service or receipt of certified or registered mail to file objection with the board. The application itself shall be deemed sufficient notice if the adjacent owner is the state of Idaho.

(c) In the event objection to the application is filed by an adjacent owner or if the board deems it advisable because of the existence of unusual circumstances, the board shall fix a time, no later than sixty (60) days from the date of filing application, and a place, for affording the applicant and the adjacent owner filing objection to appear and present evidence in support of or in opposition to the application and within forty-five (45) days thereafter shall render a decision and give notice thereof to the parties concerned who may thereafter resort to appellate procedures prescribed in section 58-1306, Idaho Code.

(d) A permit shall not be required for repair of an existing navigational encroachment.

(e) A permit shall not be required for replacement of an existing navigational encroachment if all the following conditions are met:

- (1) The existing encroachment is covered by a valid permit in good standing.
- (2) The existing encroachment meets the current requirements for new encroachments.
- (3) The location and orientation of the replacement do not change from the existing encroachment.
- (4) The replacement will be the exact same size or smaller and the same shape as the existing encroachment.
- (5) The replacement will not be located closer to adjacent littoral right lines than the existing encroachment.

(f) Applications submitted under this section shall be upon forms to be furnished by the board and shall be accompanied by plans of the proposed navigational encroachment containing information required by section 58-1302(k), Idaho Code, and such other information as the board may by rule require in conformance with the intent and purpose of this chapter.

(g) If notice to an adjacent owner is not required or if the adjacent owner has consented to the proposed encroachment or has failed to file objection to the proposed encroachment within the time allowed following service of notice, the board shall act upon the application as expeditiously as possible but no later than sixty (60) days from receipt of the application and failure to act within such time shall constitute approval of the application.

(h) All permits issued for noncommercial navigational encroachments shall be recorded in the records of the county in which the encroachment is located and shall be a condition of issuance of a permit. Proof of recordation shall be furnished to the department by the permittee before a permit

becomes valid. Such recordation shall be at the expense of the permittee. Recordation of an issued permit serves only to provide constructive notice of the permit to the public and subsequent purchasers and mortgagees, but conveys no other right, title or interest on the permittee other than validation of said permit.

History.

I.C., § 58-146, as added by 1974, ch. 243, § 5, p. 1608; am. and redesiɡ. 1990, ch. 362,

§ 5, p. 979; am. 2006, ch. 131, § 1, p. 382; am. 2006, ch. 132, § 1, p. 385; am. 2010, ch. 124, § 1, p. 270.

STATUTORY NOTES

Amendments.

This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 131, inserted “or community” in subsection (a); substituted “58-1306” for “58-147” in subsection (c); and in subsection (e), substituted “58-1302(k)” for “58-143(k)” and deleted “or regulation” following “may by rule.”

The 2006 amendment, by ch. 132, substituted “58-1306” for “58-147” at the end of

subsection (c); in subsection (e), substituted “58-1302(k)” for “58-143(k)” and deleted “or regulation” following “may by rule”; and added subsection (g).

The 2010 amendment, by ch. 124, in subsection (a), deleted “or replacement” following “enlargement”; and added subsection (e) and redesignated the subsequent subsections accordingly.

Compiler’s Notes.

This section was formerly compiled as § 58-146.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Dock permit.

Constitutionality.

However it may be applied in any specific case, the phrase “the most unusual of circumstances” in subsection (a) is capable of a reasonable and rational interpretation based on the ordinary meaning of the words; therefore, the statute is not unconstitutionally vague. *Dupont v. Idaho State Bd. of Land Comm’rs*, 134 Idaho 618, 7 P.3d 1095 (2000).

Dock Permit.

The court affirmed the board’s decision to revoke the dock permit issued to the landowner where there was substantial evidence that the proposed area had been a designated swimming area free from boats for forty years. *Dupont v. Idaho State Bd. of Land Comm’rs*, 134 Idaho 618, 7 P.3d 1095 (2000).

Since the department acted by deciding to hold the dock applications and return the application fees pending a decision in a pending lawsuit, the automatic issuance provisions did not apply, and mandamus was not

appropriate. *Almgren v. Idaho Dep’t of Lands*, 136 Idaho 180, 30 P.3d 958 (2001).

Landowners failed to exhaust their administrative remedies when they applied for a permit to build a dock. The lake protection act allowed the department of lands to determine littoral rights; the landowners were obligated by subsection (b) to either obtain written consent from the adjoining property owners or provide notice of their permit application before the department could issue a permit. *Lovitt v. Robideaux*, 139 Idaho 322, 78 P.3d 389 (2003).

Under subsection (c) of this section and subsection (c) of § 58-1306, the district court did not err in restoring the landowners’ applications for dock permits, as their littoral rights were not terminated when the easement extended down to the ordinary high water mark of a navigable lake; the state’s placing of fill along the shoreline did not extinguish the littoral rights. *Lake CDA Invs., LLC v. Idaho Dep’t of Lands*, 149 Idaho 274, 233 P.3d 721 (2010).

58-1306. Nonnavigational or commercial navigational encroachments — Community navigational encroachments — Navigational encroachments beyond line of navigability — Application — Procedures — Publication of notice — Hearing — Appeals — Reconsideration — Criteria priority. — (a) Applications for construction, enlargement or replacement of a nonnavigational encroachment, a commercial navigational encroachment, a community navigational encroachment, or for a navigational encroachment extending beyond the line of navigability shall be submitted upon forms to be furnished by the board and accompanied by plans of the proposed encroachment containing information required by section 58-1302(k), Idaho Code, and such other information as the board may by rule require in conformance with the intent and purpose of this chapter. Applications for nonnavigational, community navigational, or commercial navigational encroachments must be submitted or approved by the riparian or littoral owner.

(b) Within ten (10) days of receipt of an application submitted under subsection (a) of this section, the board shall cause to be published in a newspaper having general circulation in the county in which the encroachment is proposed, once a week for two (2) consecutive weeks, a notice advising of the application and describing the proposed encroachment and general location thereof. Applications for installation of buried or submerged water intake lines and utility lines shall be exempt from the newspaper publication process. The board may also furnish copies of the application and accompanying plans to other state agencies having an interest in the lake to determine the opinion of such state agencies as to the likely effect of the proposed encroachment upon adjacent property and lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality. Within thirty (30) days following receipt of such copy of the application and plans from the board, such other state agency shall notify the board of its opinion and recommendations, if any, for alternate plans determined by such agency to be economically feasible to accomplish the purpose of the proposed encroachment without adversely affecting unreasonably adjacent property or other lake value factors.

(c) Any resident of the state of Idaho, or a nonresident owner or lessee of real property adjacent to the lake, or any state or federal agency may, within thirty (30) days of the first date of publication, file with the board an objection to the proposed encroachment and a request for a hearing on the application. If a hearing is requested, the same shall be held no later than ninety (90) days from the date of filing the application and notice of such hearing shall be given in the manner prescribed for publishing notice of application. The board may, in its discretion, within ten (10) days of filing the application, order a hearing in the first instance in which case, publication of notice of the application shall be dispensed with. All such hearings shall be public and held under rules promulgated by the board under the provisions of chapter 52, title 67 of the Idaho Code. The board shall render a decision within thirty (30) days following conclusion of the hearing and a copy of the board's decision shall be mailed to the applicant and to each person or agency appearing at the hearing and giving testimony

in support of or in opposition to the proposed encroachment. Any applicant or other aggrieved party so appearing at a hearing shall have the right to have the proceedings and decision of the board reviewed by the district court in the county where the encroachment is proposed by filing notice of appeal within thirty (30) days from the date of the board's decision. If the decision of the board be approval of a permit, the party or parties appealing shall file a bond on such appeal in an amount to be fixed by the court but not less than five hundred dollars (\$500) insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney's fees, incurred on the appeal in the event the district court sustains the action of the board.

(d) In the event no objection to the proposed encroachment is filed with the board and no hearing is requested or ordered by the board, based upon its investigation and considering the economics of navigational necessity, justification or benefit, public or private, of such proposed encroachment as well as its detrimental effects, if any, upon adjacent real property and lake value factors, the board shall prepare and forward to the applicant by certified mail its decision and the applicant, if dissatisfied therewith, shall have twenty (20) days from the date of mailing of such decision to notify the board if he requests a reconsideration thereof and if such request is made, the board shall set a time and place for reconsideration, not to exceed thirty (30) days from receipt of such request, at which time and place the applicant may appear in person or by authorized representative. If aggrieved by the board's decision following reconsideration, the applicant may appeal to the district court in the same manner as that provided for following a hearing.

(e) In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, the board shall consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for a nonnavigational encroachment, a commercial navigational encroachment, or a community navigational encroachment not extending below the natural or ordinary high water mark. If no objections have been filed to the application and no hearing has been requested or ordered by the board, or, if upon reconsideration of a decision disallowing a permit, or following a hearing, the board determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, it shall grant the permit. As a condition of the permit, the board may require a lease or easement for use of any part of the state owned bed of the lake.

(f) All permits issued for nonnavigational encroachments, commercial navigational encroachments, and community navigational encroachments shall be recorded in the records of the county in which the encroachment is located and shall be a condition of issuance of a permit. Proof of recordation shall be furnished to the department by the permittee before a permit becomes valid. Such recordation shall be at the expense of the permittee. Recordation of an issued permit serves only to provide constructive notice of the permit to the public and subsequent purchasers and mortgagees, but

conveys no other right, title or interest on the permittee other than validation of said permit.

(g) A permit shall not be required for repair of an existing nonnavigational encroachment, commercial navigational encroachment, or community navigational encroachment.

History.

I.C., § 58-147, as added by 1974, ch. 243, § 6, p. 1608; am. and redesiɡ. 1990, ch. 362,

§ 6, p. 979; am. 2006, ch. 131, § 2, p. 382; am. 2006, ch. 132, § 2, p. 385.

STATUTORY NOTES

Amendments.

This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 131, inserted “Community navigational encroachments —” in the section heading; in subsection (a), substituted “encroachment, a commercial navigational encroachment, a community navigational encroachment” for “or a commercial navigational encroachment”, “58-1302(k)” for “58-143(k)”, deleted “or regulation” following “may by rule” and inserted “community navigational”; following “nonnavigational”; deleted “and regulations” following “rules” in subsection (c); substituted “for a nonnavigational encroachment, a commercial navigational encroachment, or a community navigational encroachment” for “for either a nonnavigational encroachment, or a commercial navigational encroachment” in the first sentence in subsection (e); and substituted “encroachment, commercial navigational encroachment, or community navigational en-

croachment” for “or commercial navigational encroachment” in subsection (f).

The 2006 amendment, by ch. 132, inserted “Community navigational encroachments —” in the section heading; in subsection (a), substituted “encroachment, a commercial navigational encroachment, a community navigational encroachment”, “58-1302(k)” for “58-143(k)”, and deleted “or regulation” following “may by rule”; deleted “and regulations” following “rules” in subsection (c); subdivided former subsection (e) as present subsections (e) and (f); substituted “All permits issued for nonnavigational encroachments, commercial navigational encroachments, and community navigational encroachments shall be recorded” for “Recording of an issued permit” at the beginning of present subsection (f); and redesignated former subsection (f) as present subsection (g).

Compiler’s Notes.

This section was formerly compiled as § 58-147.

JUDICIAL DECISIONS

Encroachments.

While the Idaho lake protection act contemplates that the Idaho department of lands will weigh the economic benefits and detriments of a proposed navigational encroachment, it is not the only factor considered in the determination. *Brett v. Eleventh St. Dockowner’s Ass’n*, 141 Idaho 517, 112 P.3d 805 (2005).

There was a reasonable basis for concluding that a verdict in a prior litigation determined the littoral boundaries of the properties at issue, collaterally estopping the landowner from relitigating the issue of littoral rights under § 58-1302(f) of the Idaho lake protection act; and, in any event, the Idaho department of lands adequately weighed the evidence, measuring the impact of an amended encroachment permit against the possible damage to and landowner’s property, and there was nothing improper in the conclusion

that the encroachment benefits outweighed the adverse effects on the landowner. *Brett v. Eleventh St. Dockowner’s Ass’n*, 141 Idaho 517, 112 P.3d 805 (2005).

Under subsection (c) of § 58-1305 and subsection (c) of this section, the district court did not err in restoring the landowners’ applications for dock permits, as their littoral rights were not terminated when the easement extended down to the ordinary high water mark of a navigable lake; the state’s placing of fill along the shoreline did not extinguish the littoral rights. *Lake CDA Invs., LLC v. Idaho Dep’t of Lands*, 149 Idaho 274, 233 P.3d 721 (2010).

Cited in: *Kootenai Envtl. Alliance, Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 671 P.2d 1085 (1983); *Lovitt v. Robideaux*, 139 Idaho 322, 78 P.3d 389 (2003).

58-1307. Fees for specified permits — Costs of publication. —

Application for a permit for any noncommercial navigational encroachment shall be accompanied by a nonrefundable fee of up to five hundred dollars (\$500). Application for a permit for any noncommercial nonnavigational encroachment for bank stabilization and erosion control or for fisheries and wildlife habitat improvements shall be accompanied by a nonrefundable fee of up to one thousand dollars (\$1,000). Application for a permit for any other nonnavigational or commercial navigational encroachment or navigational encroachment which extends beyond the line of navigability shall be accompanied by a nonrefundable base fee, not to exceed three thousand five hundred dollars (\$3,500). Provided however, the board shall charge applicants for permits for commercial navigational encroachments the actual costs of processing the application in the event the actual costs exceed three thousand five hundred dollars (\$3,500). In addition, the board shall charge the applicant with costs of publishing notice of the application which shall be refunded if such notice is not published. Any person or agency requesting a hearing upon the application shall deposit and pay to the board an amount sufficient to cover the cost of publishing notice of hearing.

History.

I.C., § 58-148, as added by 1974, ch. 243,
§ 7, p. 1608; am. and redesign. 1990, ch. 362,

§ 7, p. 979; am. 1992, ch. 225, § 1, p. 675; am.
2006, ch. 133, § 1, p. 388; am. 2010, ch. 155,
§ 1, p. 330.

STATUTORY NOTES**Amendments.**

The 2006 amendment, by ch. 133, substituted “up to two hundred fifty dollars (\$250.00)” for “fifty dollars (\$50.00)” in the first sentence; substituted “up to three thousand five hundred dollars (\$3,500)” for “two hundred fifty dollars (\$250)” at the end of the second sentence; and added the third sentence.

The 2010 amendment, by ch. 155, rewrote and divided the former first sentence into two sentences, deleting “or” after “encroachment,” adding “shall be accompanied by a non-refundable fee of up to five hundred dollars (\$500)” and “Application for a permit for any,”

and substituting “one thousand dollars (\$1,000)” for “two hundred fifty dollars (\$250);” and in the present third sentence, substituted “non-refundable base fee, not to exceed three thousand five hundred dollars” for “non-refundable fee of up to three thousand five hundred dollars.”

Compiler's Notes.

This section was formerly compiled as § 58-148.

Effective Dates.

Section 2 of S.L. 1992, ch. 225 declared an emergency. Approved April 8, 1992.

58-1308. Penalty for violation — Injunctive relief. —

(1) Any person who violates any of the provisions of this chapter or any valid and authorized regulation, rule, permit or order of the board, or, where notified by personal service or certified mail of such violation and thereafter fails to cease and desist therein or obey an order of the board within the time provided in such notification or within thirty (30) days of service of such notice if not otherwise provided, shall be subject to a civil penalty of not less than one hundred fifty dollars (\$150) nor more than two thousand five hundred dollars (\$2,500). Such civil penalty may be assessed by the board in conjunction with any other administrative action; provided, that no civil penalty shall be assessed unless the person was given notice and opportunity for a hearing pursuant to the administrative procedure act as set forth

in chapter 52, title 67, Idaho Code. The board shall have authority and it shall be its duty to seek injunctive relief from the appropriate district court to restrain any person from encroaching on, in or above the beds or waters of a navigable lake until approval therefor has been obtained as provided in this chapter.

(2) In addition to the civil penalty set forth in subsection (1) of this section, any person who violates any of the provisions of this chapter or any valid and authorized regulation, rule, permit or order of the board, and the violation causes harm to water quality, fisheries, or other public trust values, shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) per violation or one thousand dollars (\$1,000) for each day of a continuing violation, whichever is greater. The method of recovery of said penalty shall be by a civil enforcement action in the district court in and for the county where the violation occurred. Parties to an administrative enforcement action may agree to a civil penalty as provided in this subsection.

(3) In addition to such civil penalties, any person who has been determined to have violated the provisions of this chapter or any valid and authorized regulation, rule, permit or order of the board, shall be liable for any expense incurred by the state in enforcing the chapter, or in enforcing or terminating any nuisance, source of environmental degradation, cause of sickness or health hazard.

(4) No action taken pursuant to the provisions of this chapter or of any other environmental protection law shall relieve any person from any civil action and damages that may exist for injury or damage resulting from any violation of this chapter or any valid and authorized regulation, rule, permit or order of the board.

History. § 8, p. 1608; am. and redesign. 1990, ch. 362, I.C., § 58-149, as added by 1974, ch. 243, § 8, p. 979; am. 2008, ch. 334, § 1, p. 919.

STATUTORY NOTES

Amendments. The 2008 amendment, by ch. 334, added the subsection (1) designation; in subsection (1), substituted “chapter” for “act” in the first and last sentences, inserted “permit” near the beginning of the first sentence, and added the second sentence; and added subsections (2) through (4).

Compiler’s Notes. This section was formerly compiled as § 58-149.

58-1309. Restoration — Mitigation of damages. — Any person legally found to be wrongfully encroaching on, in or above the beds or waters of a navigable lake shall, in lieu of or in addition to penalties provided herein, be directed by the court to restore the lake to as near its condition immediately prior to the unauthorized encroachment as possible or to effect such other measures as recommended by the board and ordered by the court toward mitigation of any damage caused by or resulting from such unlawful encroachment.

History. § 9, p. 1608; am. and redesign. 1990, ch. 362, I.C., § 58-150, as added by 1974, ch. 243, § 9, p. 979.

STATUTORY NOTES

Cross References.

Interference with public use of navigable lake, public nuisance, §§ 18-5901 to 18-5903.

Compiler's Notes.

This section was formerly compiled as § 58-150.

JUDICIAL DECISIONS

Recent Encroachments.

Encroachments in existence less than five years must be considered by the state board of

land commissioners to determine whether they shall be abated. *Ritter v. Standal*, 98 Idaho 446, 566 P.2d 769 (1977).

58-1310. Existing rights unaffected. — This act shall not operate or be so construed as to impair, diminish, control or divest any existing or vested water rights acquired under the laws of the state of Idaho or the United States, nor to interfere with the diversion of water from lakes under existing or vested water rights or water right permits for irrigation, domestic, commercial or other uses as recognized and provided for by Idaho water laws nor shall permit be required from a water user or his agent to clean, maintain or repair any existing diversion structure or works provided the board is notified of the work proposed to be done and the work is done as nearly as possible in a manner conforming to rules and regulations of the board for work done under permit nor shall this act be construed to impair existing encroachments in aid of navigation or any right heretofore granted an applicant by the director of the Idaho department of water resources or the director of the department of lands, nor shall this act be construed to impair existing nonnavigational encroachments not extending beyond the natural or ordinary high water mark if they have been in existence at least five (5) years prior to the effective date of this act nor any other existing nonnavigational encroachment unless action to abate the same by legal proceedings be instituted by the board within three (3) years of the effective date of this act. If abatement proceedings be instituted by the board, the court shall hear such evidence as would be pertinent upon an original application and shall consider also the length of time the encroachment has existed and its general acceptance.

History.

I.C., § 58-151, as added by 1974, ch. 243,

§ 10, p. 1608; am. and redesign. 1990, ch. 362, § 10, p. 979.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 58-151.

The phrase "the effective date of this act" refers to the effective date of S.L. 1974, ch. 243, which was effective April 5, 1974.

The term "this act" refers to S.L. 1974, ch. 243, which is compiled as §§ 58-1301 to 58-1312.

58-1311. Disclaimer of state property rights in private lands. — While the state asserts the right to regulate and control all encroachments, navigational or nonnavigational, upon, in or above the beds or waters of navigable lakes as provided for in this act, nothing contained in this act

shall be construed to vest in the state of Idaho any property right or claim of such right to any private lands lying above the natural or ordinary high water mark of any navigable lake.

History.

I.C., § 58-152, as added by 1974, ch. 243,

§ 11, p. 1608; am. and redesisg. 1990, ch. 362,
§ 11, p. 979.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 58-1312.

The term "this act" refers to S.L. 1974, ch. 243, which is compiled as §§ 58-1301 to 58-1312.

58-1312. Permitting of existing encroachments. — (1) Unless otherwise prohibited, every person seeking a permit for a navigational or nonnavigational encroachment constructed prior to January 1, 1975, shall provide the board with substantive documentation of the age of the encroachment and documentation that the encroachment has not been modified since 1974. Persons providing such documentation shall receive an encroachment permit and shall not be required to pay the application and publication fees established in this chapter. Such substantive documentation shall include dated aerial photographs, tax records, or other historical information deemed reliable by the board.

(2) Every person seeking a permit for a navigational or nonnavigational encroachment constructed, replaced or modified on or after January 1, 1975, shall submit a permit application and enter the same permitting process as required for new encroachments.

History.

I.C., § 58-153, as added by 1974, ch. 243,

§ 12, p. 1608; am. and redesisg. 1990, ch. 362,
§ 12, p. 979; am. 2006, ch. 135, § 1, p. 390.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 135, rewrote the section, which formerly read: "**Filing notice of existing encroachments.** On or before December 31, 1974, every person owning or possessing an existing navigational or nonnavigational encroachment on, in or above the beds or waters of a navigable lake in this state shall file with the board notification thereof. Such notice shall be upon forms to be furnished by the board and contain such information concerning the encroachment as would be necessary on plans submitted with an original application under the provisions of this act."

Compiler's Notes.

This section was formerly compiled as § 58-153.

CHAPTER 14

IDAHO RANGELAND RESOURCES COMMISSION

SECTION.	SECTION.
58-1401. Declaration of policy.	composition of the commis-
58-1402. Definitions.	sion.
58-1403. Rangeland resources commission created — Members.	58-1405. Compensation of members.
58-1404. Qualifications of the member and	58-1406. Chairman and staff of the commis-
	sion.

SECTION.

- 58-1407. Meetings of the commission.
58-1408. Duties and powers of the commission.
58-1409. Limitations to the powers of the commission.
58-1410. Commission accepting grants, donations and gifts.
58-1411. Bonds of agents and employees.
58-1412. Appointment of staff, duties, salary.

SECTION.

- 58-1413. Establishment of the commission's office.
58-1414. State not liable for acts or omissions of the commission or of its employees.
58-1414A. Imposition of fees.
58-1415. Deposit and disbursement of funds.
58-1416. Dissolution of the commission.

58-1401. Declaration of policy. — It is in the interest of all the people of Idaho that the abundant rangeland resources of the counties and the state be properly managed to produce multiple resources and values along with sustained yields of forage and fiber to support the economic welfare of the counties and the state. Because rangeland management, on both public and private lands, is important to each citizen of the state, it is the purpose by the enactment of this chapter to promote the economic and environmental welfare of the counties and the state by providing a means for the collection and dissemination of information and research regarding the management and uses of the county's and the state's public and private rangeland resources and the livestock grazing industry.

History.

I.C., § 58-1401, as added by 1994, ch. 374,
§ 1, p. 1203.

58-1402. Definitions. — As used in this chapter:

(1) "Rangelands" means land on which the native vegetation is predominately grasses, grass-like plants, forbs, or shrubs, including lands revegetated naturally or artificially when routine management of that vegetation is accomplished mainly through manipulation of grazing. Rangelands include natural grasslands, savannas, shrublands, most deserts, tundra, alpine communities, coastal marshes and wet meadows.

(2) "Private rangelands" means rangelands not owned by the federal government, state government, an Indian tribe or a political subdivision of the state.

History.

I.C., § 58-1402, as added by 1994, ch. 374,
§ 1, p. 1203.

58-1403. Rangeland resources commission created — Members.

— (1) There is hereby created and established in the department of self-governing agencies the Idaho rangeland resources commission, to be composed of five (5) voting members appointed by the governor from a list of names, with at least two (2) names for each appointive office submitted to the governor. The Idaho cattle association shall nominate and submit the required number of names for two (2) seats on the commission, the Idaho wool growers association shall nominate and submit the required number of names for one (1) seat on the commission, and the Idaho rangeland committee shall nominate and submit the required number of names for two

(2) seats on the commission. Members of the commission shall serve five (5) year terms. Initially, one (1) member of the commission will serve a one (1) year term, one (1) member of the commission will serve a two (2) year term, one (1) member of the commission will serve a three (3) year term, one (1) member of the commission will serve a four (4) year term, and one (1) member of the commission will serve a five (5) year term. For the initial commission members, the duration of each member's term shall be determined by lot. Vacancies to the board shall be filled through nominations to the governor by the entity who originally submitted names for the position. Only the remainder of the term shall be served. No commissioner can serve more than two (2) consecutive five (5) year terms. No two (2) commissioners may reside in the same county.

(2) The governor shall also name as permanent advisory members to the commission, the state director of the bureau of land management, a representative of the U.S. forest service, the state conservationist from the soil conservation service, the director of the Idaho department of lands, the director of the Idaho department of agriculture, the chairman of the Idaho rangeland committee or his designee, the current president of the Idaho section of the society of range management, the deans of the University of Idaho colleges of agriculture and forestry, wildlife and range sciences or their designees. No advisory member of the commission shall have a vote on the commission.

History.

I.C., § 58-1403, as added by 1994, ch. 374,
§ 1, p. 1203.

STATUTORY NOTES

Cross References.

Department of self-governing agencies,
§ 67-2601 et seq.

Director of department of agriculture, § 22-101.

Director of department of lands, § 58-105.

Compiler's Notes.

For more on the Idaho cattle association, see <http://www.idahocattle.org>.

For more on the Idaho wool growers association, see <http://www.idahowool.org>.

For more on the Idaho offices of the bureau

of land management, see <http://www.blm.gov/id/st/en.html>.

The soil conservation service, referred to in subsection (2), was renamed as the natural resources conservation service in 1994. See <http://www.id.nrcs.usda.gov>.

For more on the society of range management, see <http://rangelands.org>.

The university of Idaho colleges of agriculture and forestry, wildlife and range sciences, referred to in subsection (2), are now the colleges of agriculture and life sciences and the college of natural resources. See <http://www.uidaho.edu/academics>.

58-1404. Qualifications of the member and composition of the commission. — Each member of the commission shall be nominated and appointed because of their knowledge of the state's rangelands, rangeland management and the livestock grazing industry, or because they possess communications skills which would enhance the ability of the commission to carry out its duties. Members of the commission shall be residents of the state who derive a substantial part of their income from the use of rangelands, own private rangelands, own private dry grazing land or is a licensed permittee on state or federal lands, within the state of Idaho.

Corporations, firms, or other organizations may not, as such, serve as a member of the commission. Representatives, however, of corporations, firms, or other organizations that meet the requirements of membership to the commission may serve as commissioners.

History.

I.C., § 58-1404, as added by 1994, ch. 374,
§ 1, p. 1203.

58-1405. Compensation of members. — Members of the commission may be compensated as provided in section 59-509(b), Idaho Code.

History.

I.C., § 58-1405, as added by 1994, ch. 374,
§ 1, p. 1203.

58-1406. Chairman and staff of the commission. — The commission shall elect a chairman and may employ clerical or other staff who are not members of the commission.

History.

I.C., § 58-1406, as added by 1994, ch. 374,
§ 1, p. 1203.

58-1407. Meetings of the commission. — The commission shall meet not less than one (1) time in every three (3) month period and at such times as may be determined by either the chairman or a majority of the commission members. Any meeting may be held at any location within the state, and at any time.

History.

I.C., § 58-1407, as added by 1994, ch. 374,
§ 1, p. 1203.

58-1408. Duties and powers of the commission. — (1) Consistent with the general purposes of this chapter, the commission shall establish the policies to be followed in the accomplishments of such purposes.

(2) In the administration of the provisions of this chapter, the commission shall, in conjunction and cooperation with other entities which represent the livestock grazing industry, have the following duties, authorities and powers.

(a) Conduct research and surveys to determine public attitudes and levels of knowledge regarding rangeland management and the livestock grazing industry;

(b) Design educational campaigns and other needed efforts to provide the public with accurate information regarding the management of Idaho's rangelands and the livestock grazing industry;

(c) Be an advocate for the proper management of Idaho's rangelands and for a healthy livestock grazing industry in the state;

(d) Be a source of accurate and timely data regarding the rangeland resource and the livestock grazing industry;

(e) Make projections regarding availability of forage, new or existing

products and markets, and other biological or social trends which might affect rangeland management or the livestock grazing industry in Idaho; and

(f) Cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state or by national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education and publicity.

(3) The commission shall also have the duty, power and authority:

(a) To take such actions as the commission deems necessary or advisable to stabilize and protect the livestock grazing industry of the state and the health and welfare of the public;

(b) To enter into such contracts as may be necessary or advisable;

(c) To appoint and employ officers, agents and other personnel, including experts in publicizing rangeland management or the livestock grazing industry, and to prescribe their duties and fix their compensation;

(d) To sue and be sued as a board, without individual liability of the board members, when the board is acting within the scope of the powers of the board;

(e) To make use of such advertising means and methods as the commission deems advisable and to enter into contracts and agreements for research and advertising within the state;

(f) To lease, purchase or own the real or personal property deemed necessary in the administration of the provisions of this chapter;

(g) To prosecute in the name of the state of Idaho any suit or action for collection of any assessment provided for in this chapter;

(h) To adopt, rescind, modify and amend all necessary and proper orders, resolutions and regulations for the procedure and exercise of its powers and the performance of its duties;

(i) To incur indebtedness and carry on all business activities; and

(j) To keep books and records and accounts of all its doings, which books, records and accounts shall be open to inspection at all times by the state controller and the public.

History.

I.C., § 58-1408, as added by 1994, ch. 374,
§ 1, p. 1203; am. 2003, ch. 32, § 28, p. 115.

58-1409. Limitations to the powers of the commission. — Irrespective of such actions as may be taken by individual members of the commission, the commission itself shall not use any funds or other resources of the commission to influence the outcome of any election for public office, be it state or federal, or to influence the enactment or defeat of any specific piece of legislation; provided however, the commission may, in the course of implementation of this chapter, generally and objectively inform the public of legislative or regulatory proposals which may affect the management of public or private rangelands in Idaho or the livestock grazing industry.

History.

I.C., § 58-1409, as added by 1994, ch. 374,
§ 1, p. 1203.

58-1410. Commission accepting grants, donations and gifts. —

The commission may accept grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this chapter which may be specified as a condition of any grant, donation or gift. All funds received under the provisions of this chapter shall be paid into a bank account in the name of the Idaho rangeland resources commission and such moneys are hereby continuously appropriated and made available for defraying the expenses of the commission in carrying out the provisions of this chapter.

History.

I.C., § 58-1410, as added by 1994, ch. 374,
§ 1, p. 1203.

58-1411. Bonds of agents and employees. — Any agent or employee appointed by the commission shall be bonded to the state of Idaho in the time, form, and manner as prescribed in chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this chapter.

History.

I.C., § 58-1411, as added by 1994, ch. 374,
§ 1, p. 1203.

58-1412. Appointment of staff, duties, salary. — The commission may appoint clerical or other staff, on either a full or part-time basis, who shall devote their time to the administration of the provisions of this chapter. The staff shall be paid reasonable salaries as fixed by the commission, commensurate with their duties and experience.

History.

I.C., § 58-1412, as added by 1994, ch. 374,
§ 1, p. 1203.

58-1413. Establishment of the commission's office. — For the convenience of the majority of those most likely to be affected by the administration of this act, the commission shall establish and maintain an office within the state of Idaho.

History.

I.C., § 58-1413, as added by 1994, ch. 374,
§ 1, p. 1203.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1994, ch. 374, which is codified as §§ 58-1401 to 58-

1414, 58-1415, and 58-1416. Probably, the reference should be to "this chapter," being chapter 14, title 58, Idaho Code.

58-1414. State not liable for acts or omissions of the commission or of its employees. — The state of Idaho is not liable for the acts or omissions of the commission or any member thereof or any officer, agent or employee thereof.

History.

I.C., § 58-1414, as added by 1994, ch. 374,
§ 1, p. 1203.

58-1414A. Imposition of fees. — (1) There is hereby imposed, as of January 1, of each year, a fee upon owners of dry grazing land within the state of Idaho for the purpose of funding the activities and obligations of the Idaho rangeland resources commission. The fee shall be in the amount of two cents (2¢) per acre of dry grazing land. "Dry grazing land" is that category of land defined by the state tax commission for property tax purposes. No later than the third Monday in July, the county assessor shall provide the Idaho rangeland resources commission, via electronic media, an alphabetic list of the owners of dry grazing land in the county, as shown on the records of the county. The information on dry grazing land shall be provided as follows:

- (a) Owner name;
- (b) Billing address;
- (c) County;
- (d) Parcel identification number;
- (e) Number of acres.

An owner of dry grazing land shall not be assessed the fee contained herein if the owner's or owners' legal representative signs an affidavit attesting under penalties of perjury that the dry grazing land is not utilized for grazing. The commission shall provide the form and the affidavit shall be filed with the commission prior to the second Monday in July of the current year. The commission shall file a duplicate copy of any affidavit received with the appropriate county assessor.

(2) In addition to the fees imposed in subsection (1) of this section, there is hereby imposed, as of January 1 of each year a fee of ten cents (10¢) per animal unit month on all domestic cattle and sheep utilizing state grazing lands in the state of Idaho. The Idaho department of lands is hereby directed to collect this fee in conjunction with its annual billing for rental of grazing lands and shall remit such collection to the Idaho rangeland resource committee on a monthly basis.

(3) In addition to the fees imposed in subsections (1) and (2) of this section, there is hereby imposed, as of January 1, of each calendar year, a fee of ten cents (10¢) per animal unit month on all domestic cattle and sheep utilizing United States forest service and bureau of land management lands in the state of Idaho if a joint exercise of powers agreement or memorandum of understanding has been entered into authorizing the collection of such a fee. The federal agencies shall, as part of their billing process, include provisions for the collection of this fee and remittance of the fee to the Idaho rangeland resources commission.

(4) The fee established in subsections (1), (2) and (3) of this section, shall be a debt of the owner(s), lessee(s) or permittee(s) of the dry grazing land

obligated to pay the fee and the fee shall be a debt owed the commission and may be collected by the commission using the normal process to recover a debt.

(5) Any person may request from the commission in writing, within thirty (30) calendar days after payment thereof, a refund of all or any portion of an assessment levied hereunder. The commission shall make the refund not later than sixty (60) days after receipt of refund request as long as the commission has received the moneys from the entity collecting the assessment.

(6) The commission may at its discretion, determine by a majority vote of the commission the minimum fees to be assessed as described in this section. Once such minimum fees have been adopted, the commission shall collect no fee owed pursuant to this section which is equal to or less than the minimum set by the commission. Prior to the adoption of minimum fees by the commission as described in this subsection, the minimum fee owed the commission shall be five dollars (\$5.00) for the owners of dry grazing land as described in subsection (1) of this section. There shall be no minimum fee for the assessments described in subsections (2) or (3) of this section unless otherwise determined by the commission.

History.

I.C., § 58-1414A, as added by 1996, ch. 233,

§ 1, p. 761; am. 1997, ch. 117, § 9, p. 298; am. 1998, ch. 117, § 1, p. 433.

STATUTORY NOTES

Cross References.

State tax commission, § 63-101.

Compiler's Notes.

For offices of the United States forest service in Idaho, see <http://www.idahoforests.org/reference.htm>.

For bureau of land management programs in Idaho, see <http://www.blm.gov/ld/st/en.html>.

The letter "s" enclosed in parentheses so appeared in the law as enacted.

the act shall be in full force and effect on and after January 1, 1997.

Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 to 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Section 2 of S.L. 1998, ch. 117 declared an emergency and provided this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1998. Approved March 19, 1998.

Effective Dates.

Section 2 of S.L. 1996, ch. 233 provided that

58-1415. Deposit and disbursement of funds. — (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such account signed by two (2) officers designated by the commission when the amount of such payments exceeds two thousand dollars (\$2,000). Such designees may include the members of the staff of the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate and house committees responsible for natural resources, the director of legislative services, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission for the preceding year. The report shall also include an estimate of income of the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January-15, 1994, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the director of legislative services. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

History.

I.C., § 58-1415, as added by 1994, ch. 374,
§ 1, p. 1203; am. 2003, ch. 32, § 29, p. 115.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Director of legislative services, § 67-701.
Division of financial management, § 67-1910.

58-1416. Dissolution of the commission. — (1) Subject to the conditions set forth in this section, the commission may be dissolved upon a majority vote by the commission. No such vote may take place at anytime prior to three (3) years from the date of enactment of this chapter. No such vote may be taken unless first approved by a majority vote of those entities responsible for nominating commission members.

(2) Should such dissolution as described in this section occur, any unencumbered funds held by the commission shall be distributed by the commission or as prescribed by state law.

History.

I.C., § 58-1416, as added by 1994, ch. 374,
§ 1, p. 1203.

STATUTORY NOTES

Compiler's Notes.

The phrase "the date of enactment of this chapter" in subsection (1) refers to the date of

the enactment of S.L. 1994, ch. 374, which was approved on April 7, 1994, and made retroactively effective to January 1, 1994.

TITLE 59

PUBLIC OFFICERS IN GENERAL

CHAPTER.

1. QUALIFICATIONS AND RESTRICTIONS ON RESIDENCE, §§ 59-101 — 59-105.
2. PROHIBITIONS AGAINST CONTRACTS WITH OFFICERS, §§ 59-201 — 59-210.
3. NOMINATIONS AND COMMISSIONS, §§ 59-301 — 59-307.
4. OATH OF OFFICE, §§ 59-401 — 59-408.
5. SALARIES OF OFFICERS, §§ 59-501 — 59-514.
6. REPORTS OF STATE OFFICERS. [REPEALED.]
7. ETHICS IN GOVERNMENT, §§ 59-701 — 59-706.
8. BONDS OF OFFICERS AND PUBLIC EMPLOYEES, §§ 59-801 — 59-832.
9. RESIGNATIONS AND VACANCIES, §§ 59-901 — 59-917.

CHAPTER.

10. MISCELLANEOUS PROVISIONS, §§ 59-1001 — 59-1026.
11. SOCIAL SECURITY BENEFITS, §§ 59-1101 — 59-1115.
12. GROUP INSURANCE. [REPEALED.]
13. PUBLIC EMPLOYEE RETIREMENT SYSTEM, §§ 59-1301 — 59-1399.
14. EMERGENCY INTERIM EXECUTIVE AND JUDICIAL SUCCESSION ACT, §§ 59-1401 — 59-1412.
15. SUPPLEMENTAL RETIREMENT SYSTEM, §§ 59-1501 — 59-1504.
16. NONCLASSIFIED STATE OFFICERS AND EMPLOYEES, §§ 59-1601 — 59-1608.

CHAPTER 1

QUALIFICATIONS AND RESTRICTIONS ON RESIDENCE

SECTION.

- 59-101. Qualifications in general.
- 59-102. Legislators disqualified from holding certain offices.
- 59-103. Residence of certain officers. [Repealed.]

SECTION.

- 59-104. Absence of state officers prohibited — Exemptions.
- 59-105. Offices to be provided in capitol mall.

59-101. Qualifications in general. — Every qualified elector shall be eligible to hold any office of this state for which he is an elector, except as otherwise provided by the Constitution.

History.

1890-1891, p. 57, § 5; reen. 1899, p. 33, § 5;

am. R.C., § 250; reen. C.L., § 250; C.S., § 381; I.C.A., § 57-101.

STATUTORY NOTES

Cross References.

Disqualifications to hold office enumerated, Idaho Const., Art. VI, § 3.

Disqualified person holding office, penalty, § 18-2712.

Office or position of profit, holding of other prohibited, § 59-511.

Qualifications: District judges, Idaho Const., Art. V, § 23; electors, Idaho Const., Art. VI, § 2; executive officers, Idaho Const., Art. IV, § 3; legislative officers, Idaho Const., Art. III, § 6; prosecuting attorneys, Idaho Const., Art. V, § 18.

Usurpation of office, action for, § 6-602.

JUDICIAL DECISIONS

Cited in: Jordan v. Pearce, 91 Idaho 687, 429 P.2d 419 (1967).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, § 48 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 21 to 45.

A.L.R. — Removal of public officer for mis-

conduct during previous term where, by constitutional or statutory provision, misconduct or removal therefor disqualifies officer beyond immediate term. 42 A.L.R.3d 691.

59-102. Legislators disqualified from holding certain offices. — It shall be unlawful for any member of the legislature, during the term for which he was elected, to accept or receive, or for the governor, or other officials or board, to appoint such member of the legislature to, any office of trust, profit, honor or emolument, created by any law passed by the legislature of which he is a member. Any appointment made in violation of this section shall be null and void and without force and effect, and any attempt to exercise the powers of such office by such appointee shall be a usurpation, and the appointee shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not less than five hundred dollars nor more than five thousand dollars.

History.

1907, p. 308, §§ 1, 2; reen. R.C. & C.L., § 251; C.S., § 382; I.C.A., § 57-102.

STATUTORY NOTES

Compiler's Notes.

Members of the park and recreation board of the department of parks and recreation are exempted from the provisions of this section

by § 4 of S.L. 1965, ch. 85, as last amended by S.L. 1991, ch. 156, § 1 and compiled as § 67-4221.

JUDICIAL DECISIONS

ANALYSIS

Effect on organic act.

Office incident to creation of district.

Scope.

Effect on Organic Act.

The fact that this section deals with the same evil as section 8 of the Organic Act of the territory of Idaho evidences an intent to repeal said section of the Organic Act, if it were still in existence. *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967).

Office Incident to Creation of District.

An act which makes it possible for people to organize a district and thereby bring into

existence an office does not create such office. *State v. Gooding*, 22 Idaho 128, 124 P. 791 (1912).

Scope.

Statutory proceedings for removal of officers being quasi-criminal in character, disqualifications mentioned herein will not be extended to persons who do not come clearly within their scope. *State v. Gooding*, 22 Idaho 128, 124 P. 791 (1912).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 21 to 45, 243, 274.

59-103. Residence of certain officers. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised R.S., § 325; am. R.C., § 252; reen. C.L., § 252; C.S., § 383; I.C.A., § 57-103; am. 1961, ch. 10, § 1,

p. 12; am. 1971, ch. 82, § 1, p. 181; am. 1994, ch. 180, § 125, p. 420, was repealed by S.L. 1995, ch. 30, § 1, effective February 16, 1995.

59-104. Absence of state officers prohibited — Exemptions. — No state or district officer must absent himself from the state or district for more than thirty (30) days, unless upon business of the state, or with the consent of the governor. The consent of the governor shall not be necessary in the case of persons serving in the armed forces of the United States.

History.

R.S., § 326; am. 1890-1891, p. 21, § 1; reen. 1899, p. 13, § 1; reen. R.C. & C.L., § 253;

C.S., § 384; I.C.A., § 57-104; am. 1945, ch. 164, § 6, p. 245.

STATUTORY NOTES**Effective Dates.**

Section 7 of S.L. 1945, ch. 164 declared an emergency. Approved March 16, 1945.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, § 163.

59-105. Offices to be provided in capitol mall. — The governor, lieutenant governor, secretary of state, attorney general, state treasurer, state controller and superintendent of public instruction may occupy, without rent or charge, the offices provided for them respectively in the capitol mall; and no pay or allowance must be made to any one of said officers for rent, fuel, or lights whether such officer occupy such office or not.

History.

R.S., § 327; reen. R.C. & C.L., § 254; C.S.,

§ 385; I.C.A., § 57-105; am. 2011, ch. 303, § 1, p. 870.

STATUTORY NOTES**Cross References.**

Attorney general, § 67-1401 et seq.
Governor, § 67-801 et seq.
Lieutenant governor, § 67-809.
Secretary of state, § 67-901 et seq.
State controller, § 67-1001 et seq.
State treasurer, § 67-1201 et seq.
Superintendent of public instruction, § 67-1501 et seq.

Amendments.

The 2011 amendment, by ch. 303, substituted "capitol mall" for "capitol building" in the section heading and once in the text and substituted "governor, lieutenant governor, secretary of state, attorney general, state treasurer, state controller and superintendent of public instruction" for "the officers enumerated in section 59-103."

CHAPTER 2

PROHIBITIONS AGAINST CONTRACTS WITH OFFICERS

SECTION.

59-201. Officers not to be interested in contracts.

59-201A. Remote interests.

59-202. Officers not to be interested in sales.

59-203. Prohibited contracts voidable.

59-204. Dealing in warrants prohibited.

59-205. Affidavit of nonviolation a prerequisite to allowance of accounts.

59-206. Provisions of chapter violated — Dis-

SECTION.

bursing officer not to pay warrants.

59-207. Suspension of settlement or payment — Prosecution of offenders.

59-208. Violation.

59-209. Noncompensated public official — Exception.

59-210. Violation relating to public contracts.

59-201. Officers not to be interested in contracts. — Members of the legislature, state, county, city, district and precinct officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members.

History.

R.S., § 365; am. R.C., § 255; reen. C.L., § 255; C.S., § 386; I.C.A., § 57-201.

STATUTORY NOTES**Cross References.**

County officers not to present claims, § 31-1504.

Prohibited contracts voidable, § 59-203.

JUDICIAL DECISIONS

ANALYSIS

Grants of franchises.

Illegal charges for services.

Official's primary duty.

Prohibited contracts.

Grants of Franchises.

Where plaintiffs participated in the bidding and award of cable television franchise process by city and no protest was made by the plaintiffs when the several city governments banded together to form the committee to investigate the award and recommend the franchise, and no objection was lodged against the prospect of the various cities granting franchises, the trial court did not err in holding that the plaintiffs were estopped from pursuing collateral attacks upon grant of franchise to others or upon ordinance or upon any other known defect. *KTVB, Inc. v. Boise City*, 94 Idaho 279, 486 P.2d 992 (1971).

Illegal Charges for Services.

When officer, accused of charging illegal fees, honestly believed that such charges were legal, he should not be removed from office.

Ponting v. Isaman, 7 Idaho 581, 65 P. 434 (1901).

Fact that extra services are rendered is immaterial, and a promise by the board to pay commissioner an extra fee or sum beyond that fixed by law is not binding, although he renders services and exercises a greater degree of diligence than could legally have been expected of him. *Robinson v. Huffaker*, 23 Idaho 173, 129 P. 334 (1912).

Illegal selling of property to a municipality by officer thereof and collecting pay therefor is not collection of an illegal fee. *Collman v. Wanamaker*, 27 Idaho 342, 149 P. 292 (1915).

Official's Primary Duty.

Official's duty is to give to public service the full benefit of a disinterested judgment. *McRoberts v. Hoar*, 28 Idaho 163, 152 P. 1046 (1915).

Prohibited Contracts.

Contract made between secretary of state and printing company, whereby former is to receive a part of the compensation payable to the latter for printing session laws and legislative journals, is within prohibitions of this section. *State ex rel. Anderson v. Lewis*, 6 Idaho 21, 52 P. 163 (1898).

Contract with wife of one member of board

of school trustees, employing her to teach in a school over which such board has supervision, was void. *Nuckols v. Lyle*, 8 Idaho 589, 70 P. 401 (1902).

Member of board of county commissioners cannot lease or contract with board for the use of real or personal property owned by him. *Robinson v. Huffaker*, 23 Idaho 173, 129 P. 334 (1912).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 260 to 262, 342, 343.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 244.

59-201A. Remote interests. — (1) A public officer shall not be deemed to be interested in a contract, within the meaning of section 59-201, Idaho Code, if he has only a remote interest in the contract and if the fact and extent of such interest is disclosed to the body of which he is an officer and noted in the official minutes or similar records prior to the formation of the contract, and thereafter the governing body authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer having the remote interest. As used in this section, “remote interest” means:

- (a) That of a nonsalaried officer of a nonprofit corporation; or
- (b) That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary; or
- (c) That of a landlord or tenant of a contracting party; or
- (d) That of a holder of less than one percent (1%) of the shares of a corporation or cooperative which is a contracting party.

(2) Although a public official’s interest in a contract may be only remote, a public official shall not influence or attempt to influence any other officer of the board of which he is an officer to enter into the contract. Violation of the provisions of this subsection shall be a misdemeanor as provided in section 59-208, Idaho Code. Any contract created or entered into in violation of the provisions of this subsection shall be void.

History.

I.C., § 59-201A, as added by 1994, ch. 332, § 1, p. 1063.

59-202. Officers not to be interested in sales. — State, county, district, precinct and city officers must not be purchasers at any sale nor vendors at any purchase made by them in their official capacity.

History.

R.S., § 366; am. R.C., § 256; reen. C.L., § 256; C.S., § 387; I.C.A., § 57-202.

STATUTORY NOTES

Cross References.

Penalty for officers purchasing at sales,
§ 18-2705.

Prohibited contracts voidable, § 59-203.

JUDICIAL DECISIONS

Coroner.

Under this section a county coroner engaged in the undertaking business is not entitled to payment from the county for ex-

penses incurred by him as undertaker in burial of deceased persons who had been a county charge. *Benewah County v. Mitchell*, 57 Idaho 1, 61 P.2d 284 (1936).

59-203. Prohibited contracts voidable. — Every contract made in violation of any of the provisions of the two (2) preceding sections [59-201 and 59-203, Idaho Code,] may be avoided at the instance of any party except the officer interested therein.

History.

R.S., § 367; reen. R.C. & C.L., § 257; C.S., § 388; I.C.A., § 57-203.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion was added by the compiler to clarify the reference in this sec-

tion. Section 59-201A, enacted in 1994, was not part of this chapter when this reference was added to the Idaho Code.

JUDICIAL DECISIONS

Void School Board Contract.

Payment under void contract between board of school trustees and wife of a member

of board may be enjoined at the suit of any taxpayer of the school district. *Nuckols v. Lyle*, 8 Idaho 589, 70 P. 401 (1902).

59-204. Dealing in warrants prohibited. — The state treasurer and state controller, the several county, city, district or precinct officers of this state, their deputies and clerks, are prohibited from purchasing or selling, or in any manner receiving to their own use or benefit, or to the use or benefit of any person or persons, whatever, any state, county, or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state, or any county or city thereof, except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy or clerk, and evidences of the funded indebtedness of such state, county, city, district or corporation.

History.

1875, p. 667, § 1; R.S., § 368; am. R.C.,

§ 258; reen. C.L., § 258; C.S., § 389; I.C.A., § 57-204; am. 1994, ch. 180, § 126, p. 420.

STATUTORY NOTES

Cross References.

Default in accounts of state treasurer, removal from office, § 67-1054.

Penalty for officers dealing in scrip, § 18-2705.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided

that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R.

No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 126 of S.L. 1994, ch. 180 became effective January 2, 1995.

JUDICIAL DECISIONS

Scope.

This section was a part of an act entitled "An act to prevent officers from dealing in certain securities." Use of word "dealing"

clearly indicates intention of legislature to preclude officers from dealing in such securities in any manner. *Libby v. Pelham*, 30 Idaho 614, 166 P. 575 (1917).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 265, 346.

59-205. Affidavit of nonviolation a prerequisite to allowance of accounts. — Every officer whose duty it is to audit and allow the accounts of other state, county, district, city or precinct officers, must, before allowing such accounts, require each of such officers to make and file with him an affidavit that he has not violated any of the provisions of this chapter.

History.

R.S., § 369; am. R.C., § 259; reen. C.L., § 259; C.S., § 390; I.C.A., § 57-205.

59-206. Provisions of chapter violated — Disbursing officer not to pay warrants. — Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the state, county, city or district, when the same has been purchased, sold, received or transferred contrary to any of the provisions of this chapter.

History.

R.S., § 370; am. R.C., § 260; reen. C.L., § 260; C.S., § 391; I.C.A., § 57-206.

JUDICIAL DECISIONS

Official Purchasing as Agent.

Where wife purchased county warrants through husband as agent, who was at that

time county commissioner, treasurer is without authority to pay same. *Libby v. Pelham*, 30 Idaho 614, 166 P. 575 (1917).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 263, 346.

59-207. Suspension of settlement or payment — Prosecution of offenders. — Every officer charged with the disbursement of public moneys, who is informed by affidavit that any officer whose account is to be settled, audited, or paid by him, has violated any of the provisions of this chapter, must suspend such settlement or payment, and cause such officer to be prosecuted for such violation.

History.

1875, p. 667, § 5; R.S., § 371; reen. R.C. & C.L., § 261; C.S., § 392; I.C.A., § 57-207.

STATUTORY NOTES**Cross References.**

Bonds of county recorder and county auditor to be filed in district court for county, § 31-2309.

County officers, amounts of official bonds, § 31-2015; when not fixed by law, § 31-2016.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 329 to 338.

59-208. Violation. — A violation of the provisions of this chapter, unless otherwise provided, is a misdemeanor and shall be punished by a fine not exceeding one thousand dollars (\$1,000), or incarceration in the county jail for a period not exceeding one (1) year, or by both such fine and incarceration.

History.

I.C., § 59-208, as added by 1990, ch. 328, § 4, p. 899; am. 2005, ch. 214, § 3, p. 684.

59-209. Noncompensated public official — Exception. — When a person is a public official by reason of his appointment or election to a governing board of a governmental entity for which the person receives no salary or fee as compensation for his service on said board, he shall not be prohibited from having an interest in any contract made or entered into by the board of which he is a member, if he strictly observes the procedure set out in section 18-1361A, Idaho Code.

History.

I.C., § 59-209, as added by 1992, ch. 121, § 2, p. 398.

59-210. Violation relating to public contracts. — Officers shall not commit any act prohibited by section 67-5726, Idaho Code, violations of which are subject to penalties as provided in section 67-5734, Idaho Code, and which prohibitions and penalties shall be deemed to extend to all public officers governed by the provisions of this chapter.

History.

I.C., § 59-210, as added by 2005, ch. 214, § 2, p. 684.

CHAPTER 3

NOMINATIONS AND COMMISSIONS

SECTION.	SECTION.
59-301. Nominations to be in writing.	59-306. Appointment of employees.
59-302. Resolution of concurrence.	59-307. Certificate to be filed before salary
59-303. Commissions by governor.	paid — Duty of state control-
59-304. Form of commission.	ler.
59-305. Other commissions.	

59-301. Nominations to be in writing. — Nominations made by the governor to the senate must be in writing, designating the residence of the nominee and the office for which he is nominated.

History.
R.S., § 335; am. R.C., § 262; reen. C.L.,
§ 262; C.S., § 393; I.C.A., § 57-301.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 87-99. **C.J.S.** — 67 C.J.S., Officers and Public Employees, §§ 46, 47.

59-302. Resolution of concurrence. — Whenever the senate concurs in a nomination, its secretary must immediately deliver a copy of the resolution of concurrence, certified by the president and secretary, to the governor.

History.
R.S., § 336; am. R.C., § 263; reen. C.L.,
§ 263; C.S., § 394; I.C.A., § 57-302.

JUDICIAL DECISIONS

Cited in: In re Union Pac. R.R., 81 Idaho 300, 340 P.2d 1103 (1959).

59-303. Commissions by governor. — The governor must commission:

1. All officers of the militia.
2. All officers appointed by the governor, or by the governor with the advice and consent of the senate.

History.
R.S., § 337; am. R.C., § 264; reen. C.L.,
§ 264; C.S., § 395; I.C.A., § 57-303.

STATUTORY NOTES

Cross References.
Transmission of list of appointments to legislature, § 67-803.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 128, 129.

59-304. Form of commission. — The commissions of all officers commissioned by the governor must be issued in the name of the people of this state, and must be signed by the governor and attested by the secretary of state, under the great seal.

History.

R.S., § 338; am. R.C., § 265; reen. C.L., § 265; C.S., § 396; I.C.A., § 57-304.

59-305. Other commissions. — The commissions of all officers, where no special provision is made by law, must be signed by the presiding officer of the body, or by the person making the appointment.

History.

R.S., § 339; reen. R.C. & C.L., § 266; C.S., § 397; I.C.A., § 57-305.

JUDICIAL DECISIONS**Application of Section.**

The children's commission's (S.L. 1961, ch. 287) executive secretary is an "employee" within the purview of §§ 59-306 and 59-307

and his commission as signed by the chairman and by the director of administration complied with this section. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

59-306. Appointment of employees. — The appointment of every deputy, clerk or other employee of the state of Idaho, including contract employees, whose salary or other compensation is payable out of any appropriation or allotment specifically provided for such payment, except temporary manual labor, per diem or hourly help used irregularly at state institutions, and expert and special help such as doctors, dentists and others who render service in emergency cases, shall be made on forms prescribed by the division of budget, policy planning and coordination by the appointing officer, board, commission or other designated authority. Such appointment form shall set forth the name, address, employee identification information and official position of such deputy, clerk or other employee, and where the rate of compensation is not fixed by general statute, the same shall be specified in such form within the limitations fixed by appropriation acts or allotments. Upon making any change in the personnel of any office, department, bureau or institution, or in the rate of compensation thereof, the appointing power shall forthwith certify such change in the same manner as an appointment.

History.

C.S., § 398a, as added by 1921, ch. 193, § 2, p. 394; am. 1929, ch. 82, § 1, p. 133;

I.C.A., § 57-306; am. 1977, ch. 307, § 1, p. 856.

STATUTORY NOTES

Compiler's Notes.

The division of budget, policy planning and coordination, referred to in the first sentence

in this section, was changed to the division of financial management by S.L. 1980, ch. 358, § 2. See § 67-1910.

JUDICIAL DECISIONS

Application of Section.

The children's commission's (S.L. 1961, ch. 287) executive secretary is an "employee" within the purview of this section and § 59-307 and his commission as signed by the chairman and by the director of administra-

tion complied with § 59-305. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

Cited in: *Schoonover v. Bonner County*, 113 Idaho 916, 750 P.2d 95 (1988).

59-307. Certificate to be filed before salary paid — Duty of state controller. — From and after the first day of June, 1921, the state controller shall not certify any claim nor issue any warrant, for the payment of any salary, wages, per diem or other compensation of any officer, clerk or other state employee, not elected by popular vote, against any appropriation specifically provided for the payment of such compensation, unless the certificate prescribed by section 59-306, Idaho Code, shall previously have been filed in his office, and the state controller shall be liable upon his official bond for the payment of such compensation in excess of the rate prescribed by law or legally fixed by such certificate of appointment.

History.

C.S., § 398b, as added by 1921, ch. 193,

§ 3, p. 394; I.C.A., § 57-307; am. 1994, ch. 180, § 127, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Con-

stitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 127 of S.L. 1994, ch. 180 became effective January 2, 1995.

JUDICIAL DECISIONS

Application of Section.

The children's commission's (S.L. 1961, ch. 287) executive secretary is an "employee" within the purview of § 59-306 and this sec-

tion and his commission as signed by the chairman and by the director of administration complied with § 59-305. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 47.

CHAPTER 4

OATH OF OFFICE

SECTION.

59-401. Loyalty oath — Form.

59-402. Time of taking oath.

59-403. Before whom oath taken.

59-404. County officers — Time and place of taking oath.

SECTION.

59-405. Where oath filed.

59-406. Oath of deputies.

59-407. Inability to appear — Taking oath.

59-408. Temporary inability of officers.

59-401. Loyalty oath — Form. — Before any officer elected or appointed to fill any office created by the laws of the state of Idaho enters upon the duties of his office, he must take and subscribe an oath, to be known as the official oath, which is as follows:

“I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Idaho, and that I will faithfully discharge the duties of (insert office) according to the best of my ability.”

History.

I.C., § 59-401, as added by 1983, ch. 160, § 2, p. 462.

STATUTORY NOTES**Prior Laws.**

Former § 59-401, which comprised R.S., § 350; am. 1895, p. 14, § 1; reen. 1899, p. 234, § 1; reen. R.C. and C.L., § 268; C.S., § 399; I.C.A., § 57-401; am. 1963, ch. 210, § 1, p. 599, was repealed by S.L. 1983, ch. 160, § 1, effective April 8, 1983.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 3 of S.L. 1983, ch. 160 declared an emergency. Approved April 8, 1983.

JUDICIAL DECISIONS**ANALYSIS**

Judges.

Police officers.

Judges.

The oath embodied in this section is a true “oath” as required of judges by Article VI of the United States Constitution even though it makes no reference to or invocation of God. *State v. Harrold*, 113 Idaho 938, 750 P.2d 959 (Ct. App.), cert. denied, 116 Idaho 467, 776 P.2d 829 (1988).

Police Officers.

Section 50-209 indicates that the decision

to appoint police officers is entirely discretionary with the municipality and, thus, although police officers are public officers whose duties relate to governmental functions of a municipality, a police officer does not fill an office created by the laws of the state of Idaho. Even though a city may require a police officer to take an oath. *State v. Whelan*, 103 Idaho 651, 651 P.2d 916 (1982).

Cited in: *Schoonover v. Bonner County*, 113 Idaho 916, 750 P.2d 95 (1988).

59-402. Time of taking oath. — Whenever a different time is not prescribed by law the oath of office must be taken, subscribed and filed within ten (10) days after the officer has notice of his election or appoint-

ment, or before the expiration of fifteen (15) days from the commencement of his term of office, when no such notice has been given.

History.

R.S., § 353; reen. R.C. & C.L., § 269; C.S., § 400; I.C.A., § 57-402.

59-403. Before whom oath taken. — Except when otherwise provided, the oath may be taken before any officer authorized to administer oaths.

History.

R.S., § 354; reen. R.C. & C.L., § 270; C.S., § 401; I.C.A., § 57-403.

STATUTORY NOTES

Cross References.

Board of dentistry, power of hearing officer to administer, § 54-912.

Civil engineers, power to administer, § 54-1228.

Clerk of county commissioners' board, right to administer, § 31-706.

Clerk of Supreme Court, authority to administer, § 1-405.

Director of department of finance, power to administer, § 67-2717.

Director of department of labor, power to administer, § 72-1338.

Director of department of lands, power to administer, § 58-105.

Election oaths, how administered, § 34-1104.

Executive and judicial officers, § 59-1006.

Judicial officer's power to administer, § 1-1901.

Land surveyors administering oath and certification, § 54-1228.

Legislative officers and committee members, power to administer, § 67-405.

Officers in armed services, power to administer, § 55-705.

Persons empowered to administer, § 9-1401.

Public works contractors' licensing board members, power to administer, § 54-1907.

Real estate commission, power to administer, § 55-1813.

State board of optometry, power to administer, § 54-1509.

State board of scaling practices members, power to administer, § 38-1208.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 59, 60.

59-404. County officers — Time and place of taking oath. — The oath of office of county elective officers shall be taken by the county commissioners before the county recorders of their respective counties, on the second Monday of January succeeding each general election, and on the same day the other county officers shall take and subscribe the official oath before the chairman of the board. Provided, however, in the event of inability to appear for the taking of the oath, for any reason, a duly elected county official may be sworn in and may subscribe to the oath, wherever he may be, provided he appear before an officer duly authorized to administer oaths, and provided further, that any person who is in any branch of the armed forces of the United States of America, may appear before any person qualified to administer oaths, as prescribed in section 55-705[, Idaho Code,] and may take and subscribe the oath of office as provided for in section 59-401[, Idaho Code,] of this title and chapter, and the oath of office shall

have the same force and effect as though it were taken before the county commissioners as herein provided.

History.

1895, p. 139, § 1; reen. 1899, p. 67, § 4; reen. R.C. & C.L., § 271; C.S., § 402; I.C.A., § 57-404; am. 1945, ch. 164, § 1, p. 245.

STATUTORY NOTES**Compiler's Notes.**

The bracketed insertions near the end of this section was added by the compiler to conform to the statutory citation style.

JUDICIAL DECISIONS

Cited in: White v. Young, 88 Idaho 188, 397 P.2d 756 (1964).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 59, 60.

59-405. Where oath filed. — Every oath of office, certified by the officer, before whom the same was taken, must be filed within the time required by law, except when otherwise specially directed, as follows:

1. The oath of all officers whose authority is not limited to any particular county, in the office of the secretary of state.
2. The oath of all officers elected or appointed for any county, district or precinct, in the offices of the recorder [recorders] of their respective counties. The oath for school district trustees shall be filed in the manner prescribed by section 33-501, Idaho Code.

History.

R.S., § 356; am. R.C., § 272; reen. C.L., § 272; C.S., § 403; I.C.A., § 57-405; am. 1980, ch. 32, § 2, p. 56.

STATUTORY NOTES**Cross References.**

Secretary of state, § 67-901 et seq. was added by the compiler to correct the syntax of the sentence.

Compiler's Notes.

The bracketed insertion in subdivision 2.

JUDICIAL DECISIONS

Cited in: Schoonover v. Bonner County, 113 Idaho 916, 750 P.2d 95 (1988).

59-406. Oath of deputies. — Deputies, clerks and subordinate officers must take and file an official oath before entering upon their duties.

History.

R.S., § 357; reen. R.C. & C.L., § 273; C.S., § 404; I.C.A., § 57-406.

JUDICIAL DECISIONS

Failure to File.

Although deputy sheriff's loyalty oath and appointment were not filed in county recorder's office as required by this section and § 31-2007, deputy who was appointed by sheriff and who took the official oath, who was in uniform and on duty in patrol car when he

stopped and arrested motorist, was clothed with substantial indicia of authority, and was a de facto officer with the authority to stop such motorist, to make an arrest, and to testify regarding that arrest. *State v. Swenson*, 119 Idaho 706, 809 P.2d 1185 (Ct. App. 1991).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 37, 38, 124, 125.

59-407. Inability to appear — Taking oath. — Whenever any elective state official shall be unable to appear for the taking of his oath as provided for in this code, for any reason, including his being a member of the armed forces of the United States, he may be sworn in and may take his oath wherever he may be, before an officer duly authorized to administer oath and if any person duly elected to a state elective position be in the armed forces of the United States of America at the time for taking his oath as provided in this chapter, he may appear before any person qualified to administer an oath, as prescribed in section 55-705[, Idaho Code], and may take the oath of office provided for in section 59-401[, Idaho Code,] and the oath shall have the same force and effect as though it were taken before an officer, legally granted the right to administer oaths within the state of Idaho.

History.

I.C.A., § 57-407, as added by 1945, ch. 164, § 2, p. 245.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertions near the end of

the section were added by the compiler to conform to the statutory citation style.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 62.

59-408. Temporary inability of officers. — In the event any county elective official shall be unable to serve, due to illness, injury or on account of war, war industries, job freezing or being a member of any branch of the armed forces of the United States of America, it shall be the duty of the county commissioners to appoint a qualified person to temporarily discharge the duties of the office as an acting officer. If possible, the person appointed must be chosen from the same political party as that of the elective official who is unable to serve.

This appointment shall remain in full force and effect until the duly elected official shall be able to assume the duties of his office. Providing,

however, that no person so appointed by the commissioners shall receive remuneration different than that which would have been received by the elective official, whose place the acting officer is filling; and provided further, that no acting officer appointed shall serve a term longer than that for which the elected official was chosen.

History.

I.C.A., § 57-408, as added by 1945, ch. 164,
§ 3, p. 245.

STATUTORY NOTES

Cross References.

Acting officers, appointment, § 59-917.

Effective Dates.

Section 7 of S.L. 1945, ch. 164 declared an emergency. Approved March 16, 1945.

CHAPTER 5 SALARIES OF OFFICERS

SECTION.

- 59-501. Salaries of state elective officers — Regular payment — Traveling expenses — Fees property of state.
59-502. Salaries of judges.
59-503. Time of payment of salaries.
59-504. Salary when title to office contested.
59-505. Salary when title to office contested — Certificate of pending suit.
59-506. Salary suspended during failure to report for moneys collected.
[59-507] 59-503. [Repealed.]
59-508. Salaries for appointive department heads and other administrative officers.

SECTION.

- 59-509. Honorariums or compensation for members of boards, commissions and councils.
59-510. [Repealed.]
59-511. Officers to devote entire time to official duties — Exceptions.
59-512. Compensation for public service.
59-513. Deferred compensation programs for employees of state or political subdivisions.
59-514. Publication of contractee, amount and purpose of personal service contracts — Definition.

59-501. Salaries of state elective officers — Regular payment — Traveling expenses — Fees property of state. — (1) The governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general and superintendent of public instruction shall, during their continuance in office, receive for their services compensation as follows:

Commencing on the first Monday in January 2011, until the first Monday in January 2012:

- Governor, \$110,734 per annum;
- Lieutenant governor, \$29,184 per annum;
- Secretary of state, \$90,006 per annum;
- State controller, \$90,006 per annum; said compensation to be audited by the legislative council;
- Attorney general, \$99,825 per annum;
- State treasurer, \$90,006 per annum; and
- State superintendent of public instruction, \$90,006 per annum.

(2) The governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general and superintendent of public instruction shall, during their continuance in office, receive for their services compensation as follows:

Commencing on the first Monday in January 2012, until the first Monday in January 2013:

Governor, \$115,348 per annum;

Lieutenant governor, \$30,400 per annum;

Secretary of state, \$93,756 per annum;

State controller, \$93,756 per annum; said compensation to be audited by the legislative council;

Attorney general, \$103,984 per annum;

State treasurer, \$93,756 per annum; and

State superintendent of public instruction, \$93,756 per annum.

(3) Commencing on the first Monday in January 2013, until the first Monday in January 2014, the governor shall receive for his services compensation of \$117,000 per annum; and each officer named in subsection (2) of this section, except for the governor, shall receive the following compensation for their services:

Lieutenant governor, thirty percent (30%) of the governor's compensation as provided for in this subsection, per annum;

Secretary of state, eighty-five percent (85%) of the governor's compensation as provided for in this subsection, per annum;

State controller, eighty-five percent (85%) of the governor's compensation as provided for in this subsection, per annum; said compensation to be audited by the legislative council;

Attorney general, ninety percent (90%) of the governor's compensation as provided for in this subsection, per annum;

State treasurer, eighty-five percent (85%) of the governor's compensation as provided for in this subsection, per annum; and

State superintendent of public instruction, eighty-five percent (85%) of the governor's compensation as provided for in this subsection, per annum.

(4) Commencing on the first Monday in January 2014, until the first Monday in January 2015, the governor shall receive for his services compensation of \$119,000 per annum; and each officer named in subsection (3) of this section, except for the governor, shall receive the following compensation for their services:

Lieutenant governor, thirty percent (30%) of the governor's compensation as provided for in this subsection, per annum;

Secretary of state, eighty-five percent (85%) of the governor's compensation as provided for in this subsection, per annum;

State controller, eighty-five percent (85%) of the governor's compensation as provided for in this subsection, per annum; said compensation to be audited by the legislative council;

Attorney general, ninety percent (90%) of the governor's compensation as provided for in this subsection, per annum;

State treasurer, eighty-five percent (85%) of the governor's compensation as provided for in this subsection, per annum; and

State superintendent of public instruction, eighty-five percent (85%) of the governor's compensation as provided for in this subsection, per annum.

(5) Such compensation shall be paid on regular pay periods as due out of the state treasury, and shall be in full for all services by said officers respectively rendered in any official capacity or employment whatever during their respective terms of office; but no increase in the rate of compensation shall be made during the terms of such officers; provided, however, that the actual and necessary expenses of the governor, lieutenant governor, secretary of state, attorney general, state controller, state treasurer, and superintendent of public instruction while traveling within the state, or between points within the state, in the performance of official duties, shall be allowed and paid by the state; not however, exceeding such sum as shall be appropriated for such purpose.

(6) Actual and necessary subsistence expenses of the governor while traveling in connection with the performance of official duties are hereby expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code. (Standard Travel Pay and Allowance Act of 1949).

(7) No officer named in this section shall receive, for the performance of any official duty any fee for his own use, but all fees fixed by law for the performance by either of them, of any official duty, shall be collected in advance and deposited with the state treasurer to the credit of the state.

History.

1907, p. 465, § 1; compiled and reen. R.C., § 274; compiled and reen. C.L., § 274; C.S., § 405; am. 1927, ch. 117, § 1, p. 117; am. 1927, ch. 249, § 1, p. 412; am. 1929, ch. 30, § 1, p. 32; I.C.A., § 57-501; am. 1933, ch. 180, § 1, p. 334; am. 1941, ch. 70, § 1, p. 134; am. 1945, ch. 131, § 1, p. 199; am. 1949, ch. 241, § 1, p. 490; am. 1953, ch. 216, § 1, p. 330; am. 1955, ch. 69, § 1, p. 135; am. 1957, ch. 316, § 1, p. 674; am. 1961, ch. 326, § 1, p. 618; am. 1965, ch. 244, § 1, p. 596; am. 1970, ch. 263,

§ 1, p. 698; am. 1974, ch. 250, § 1, p. 1644; am. 1977, ch. 178, § 2, p. 459; am. 1978, ch. 101, § 1, p. 202; am. 1979, ch. 28, § 1, p. 44; am. 1982, ch. 303, § 1, p. 764; am. 1986, ch. 272, § 1, p. 695; am. 1989, ch. 251, § 1, p. 600; am. 1993, ch. 327, § 27, p. 1186; am. 1994, ch. 435, § 1, p. 1398; am. 1994, ch. 180, § 128, p. 420; am. 1998, ch. 399, § 1, p. 1247; am. 2002, ch. 340, § 1, p. 957; am. 2006, ch. 431, § 1, p. 1318; am. 2010, ch. 264, § 1, p. 666.

STATUTORY NOTES

Cross References.

Accounting for fees by officers, § 59-1014.
Attorney general, § 67-1401 et seq.
Compensation for extra service, § 67-2508.
Diminution and increase of compensation, Idaho Const., Art. V, § 27.
Governor, § 67-801 et seq.
Legislature may provide for expenses, Idaho Const., Art. V, § 27.
Lieutenant governor, § 67-809.
Payment from appropriations, restrictions, § 67-3602.
Salaries for appointive administrative officers, § 59-508.
Secretary of state, § 67-901 et seq.
State controller, § 67-1001 et seq.
State treasurer, § 67-1201 et seq.
Superintendent of public instruction, § 67-1501 et seq.

Amendments.

This section was amended by two 1994 acts which appear to be compatible and have been compiled together.

The 1994 amendment, by ch. 180, § 128, in the introductory paragraph substituted "controller" for "auditor"; in the fourth line under the introductory paragraph substituted "controller" for "auditor"; and near the middle of the second full paragraph substituted "controller" for "auditor".

The 1994 amendment, by ch. 435, § 1, changed the compensation for: the governor from \$75,000 to \$85,000; the lieutenant governor from \$20,000 to \$22,500; the secretary of state from \$62,500 to \$67,500; the state auditor (controller) from \$62,500 to \$67,500; the attorney general from \$67,500 to \$75,000; the state treasurer from \$62,500 to \$67,500;

and the state superintendent of public instruction from \$62,500 to \$67,500.

The 2006 amendment, by ch. 431, added subsection (2) and redesignated the remaining subsections accordingly.

The 2010 amendment, by ch. 264, rewrote the section, setting compensation for elective officers from the first Monday in January 2011 to the first Monday in January 2015.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 1941, ch. 70 provided that the act should take effect on the first Monday of January, 1943.

Section 2 of S.L. 1945, ch. 131 provided that the act should take effect on the first Monday of January, 1947.

Section 2 of S.L. 1949, ch. 241 provided that the act should take effect on the first Monday of January, 1949.

Section 3 of S.L. 1953, ch. 216 provided that the act should take effect on the first day of January, 1955.

Section 3 of S.L. 1957, ch. 316 provided that

the act should take effect on and after 12 noon on the first Monday in January, 1959.

Section 2 of S.L. 1961, ch. 326 provided that the act was in full force and effect on and after 12 noon on the first Monday in January, 1963. Became law without governor's signature.

S.L. 1970, Chapter 263 became law without the signature of the governor, effective March 17, 1970.

Section 4 of S.L. 1978, ch. 101 provided that the act should take effect on and after the first Monday in January, 1979.

Section 2 of S.L. 1989, ch. 251 read: "This act shall be in full force and effect on and after the first Monday in January, 1991."

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 128 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 2 of S.L. 1994, ch. 435 provided that this act shall be in full force and effect on and after the first Monday in January, 1995.

JUDICIAL DECISIONS

Cited in: Woods v. Bragaw, 13 Idaho 607, 92 P. 576 (1907).

OPINIONS OF ATTORNEY GENERAL

Elected officials of the executive branch of state government may not receive cash com-

pensation for unused vacation leave at the end of their term of office. OAG 86-15.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 278, 279.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 270 to 287.

59-502. Salaries of judges. — (1) Commencing on July 1, 2012, the salary of the justices of the supreme court shall be one hundred twenty-one thousand nine hundred dollars (\$121,900) per annum, and the salary of the judges of the district courts shall be one hundred fourteen thousand three hundred dollars (\$114,300) per annum.

(2) Salaries of magistrates shall be as prescribed by chapter 22, title 1, Idaho Code.

(3) Salaries shall be paid on regular pay periods not less frequently than monthly as determined by order of the supreme court as due out of the state treasury, but no justice of the supreme court or judge of the district court or magistrate shall be paid his salary, or any part thereof, unless he shall first take and subscribe an oath that there is not in his hands any matter in controversy not decided by him, which has been finally submitted for his

consideration and determination thirty (30) days prior to his taking and subscribing said oath.

History.

1907, p. 465, § 2; reen. R.C. & C.L., § 275; C.S., § 406; am. 1921, ch. 23, § 1, p. 31; I.C.A., § 57-502; am. 1945, ch. 77, § 1, p. 120; am. 1949, ch. 252, § 1, p. 510; am. 1953, ch. 145, § 1, p. 234; am. 1957, ch. 315, § 1, p. 673; am. 1959, ch. 188, § 1, p. 418; am. 1962, ch. 180, § 1, p. 275; am. 1963, ch. 275, § 1, p. 709; am. 1965, ch. 303, § 1, p. 804; am. 1967, ch. 426, § 1, p. 1243; am. 1970, ch. 194, § 1, p. 562; am. 1973, ch. 4, § 1, p. 9; am. 1974, ch. 138, § 1, p. 1342; am. 1976, ch. 343, § 1, p. 1145; am. 1977, ch. 178, § 3, p. 459; am. 1978,

ch. 101, § 2, p. 202; am. 1980, ch. 252, § 1, p. 664; am. 1982, ch. 360, § 1, p. 911; am. 1985, ch. 29, § 8, p. 52; am. 1988, ch. 23, § 2, p. 25; am. 1990, ch. 39, § 2, p. 59; am. 1993, ch. 217, § 2, p. 680; am. 1996, ch. 257, § 2, p. 841; am. 1998, ch. 93, § 2, p. 338; am. 1999, ch. 250, § 2, p. 648; am. 2000, ch. 386, § 2, p. 1258; am. 2001, ch. 309, § 2, p. 1115; am. 2004, ch. 306, § 2, p. 855; am. 2005, ch. 399, § 4, p. 1361; am. 2006, ch. 369, § 1, p. 1107; am. 2007, ch. 81, § 1, p. 219; am. 2008, ch. 220, § 1, p. 680; am. 2012, ch. 329, § 1, p. 910.

STATUTORY NOTES

Cross References.

Bailiff of Supreme Court, § 1-210.

District judges, expenses, § 1-711.

Justice of Supreme Court, expenses, § 1-211.

Legislative power to increase or decrease salaries, Idaho Const., Art. V, § 27.

Magistrates of district court, § 1-2219.

Retirement compensation of justices and judges, § 1-2001 et seq.

Salaries of justices of Supreme Court and judges of district courts, Idaho Const., Art. V, § 17.

Amendments.

The 2006 amendment, by ch. 369, substituted the current first sentence of subsection (1) for language concerning salaries for 1998 through 2005, and deleted former subsection (2), which read: "For the fiscal year commencing July 1, 2005, and ending June 30, 2006, only, the salaries of the chief justice of the supreme court, justices of the supreme court, court of appeals judges, administrative district judges and district judges shall be temporarily increased by one percent (1%) if the state controller certifies to the secretary of state that the unexpended and unencumbered balance of the general fund on June 30, 2005, exceeded \$124,000,000."

The 2007 amendment, by ch. 81, added the last sentence in subsection (1).

The 2008 amendment, by ch. 220, added "and again commencing on July 1, 2008, the annual salaries of the justices of the supreme court and the annual salaries of the judges of the district courts shall be increased by three percent (3%)" in subsection (1).

The 2012 amendment, by ch. 329, rewrote subsection (1), which formerly set salaries for supreme court justices and district court judges in the years beginning July 1, 2006, 2007, and 2008.

Effective Dates.

Section 2 of S.L. 1953, ch. 145 provided that the act should take effect on and after July 1, 1953.

Section 4 of S.L. 1957, ch. 315 provided that the act should take effect on March 25, 1957.

Section 2 of S.L. 1959, ch. 188 provided that the act should take effect on and after July 1, 1959.

Section 2 of S.L. 1961, ch. 180 provided that the act should take effect from and after July 1, 1961.

Section 2 of S.L. 1963, ch. 275 provided that the act should take effect from and after July 1, 1963.

Section 2 of S.L. 1965, ch. 303 provided that the act should take effect from and after July 1, 1965.

Section 2 of S.L. 1967, ch. 426 provided that the act should take effect from and after July 1, 1967.

Section 2 of S.L. 1970, ch. 194 provided that the act should take effect on and after July 1, 1971.

Section 2 of S.L. 1973, ch. 4 declared an emergency. Approved February 1, 1973.

Section 2 of S.L. 1974, ch. 138 provided that the act should take effect on and after July 1, 1974.

Section 3 of S.L. 1976, ch. 343 provided that the act should take effect on and after July 1, 1976.

Section 4 of S.L. 1978, ch. 101 provided that the act should take effect on July 1, 1978.

JUDICIAL DECISIONS

ANALYSIS

Application of salary increases:

Disqualification of judges.
Effective date of restraint.
Mandamus to obtain salary.

Application of Salary Increases.

Act of legislature increasing salary of judges of district court from \$3,000 to \$4,000 did not apply to judge then in office during his term. *Woods v. Bragaw*, 13 Idaho 607, 92 P. 576 (1907).

Disqualification of Judges.

Supreme court justices were not disqualified to determine whether they were entitled to increased salaries before expiration of existing terms of office. *Higer v. Hansen*, 67 Idaho 45, 170 P.2d 411 (1946).

Effective Date of Restraint.

It was not intended, by either the constitu-

tion or the legislature, that there should be a restraint against the payment of increase of salaries of judicial officers immediately upon the effective date of the statute providing for same. *Higer v. Hansen*, 67 Idaho 45, 170 P.2d 411 (1946).

Mandamus to Obtain Salary.

Mandamus is the proper remedy where state officers refuse to issue warrants for increase in salaries due judicial officers. *Higer v. Hansen*, 67 Idaho 45, 170 P.2d 411 (1946).

59-503. Time of payment of salaries. — (1) The salaries of all state and district officers and employees whose salaries are paid monthly from the state treasury, shall be paid on or before the tenth day of the month following the month for which the salary is due, out of any money in the treasury not otherwise appropriated.

(2) From and after June 30, 1973, the state controller may prescribe pay periods different from a monthly pay period, except that any such program shall insure that payment is made on or before the end of the pay period following the end of the pay period for which salaries are due. The programs prescribed by the state controller need not be uniform between or among agencies and departments.

History.

1890-1891, p. 204, § 1; reen. 1899, p. 142, § 1; reen. R.C. & C.L., § 276; C.S., § 407; am. 1921, ch. 23, § 2, p. 31; am. 1929, ch. 15, § 1,

p. 15; I.C.A., § 57-503; am. 1963, ch. 133, § 1, p. 385; am. 1972, ch. 406, § 1, p. 1191; am. 1976, ch. 217, § 1, p. 789; am. 1994, ch. 180, § 129, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Effective Dates.

Section 2 of S.L. 1963, ch. 133 declared an emergency. Approved March 18, 1963.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [Jan-

uary 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 129 of S.L. 1994, ch. 180 became effective January 2, 1995.

JUDICIAL DECISIONS

Sufficiency of Appropriation.

Where salary has been fixed by legislature for a constitutional office, statute directing payment of salaries, authorizing auditor [now

state controller] to draw a warrant therefor, is sufficient appropriation. *Reed v. Huston*, 24 Idaho 26, 132 P. 109 (1913); *Rich v. Huston*, 24 Idaho 34, 132 P. 112 (1913).

59-504. Salary when title to office contested. — When the title of the incumbent of any office in this state is contested by proceedings instituted in

any court for that purpose, no warrant can thereafter be drawn or paid for any part of his salary until such proceedings have been finally determined.

History.

R.S., § 380; am. R.C., § 277; reen. C.L., § 277; C.S., § 408; I.C.A., § 57-504.

STATUTORY NOTES**Cross References.**

Actions for usurpation of office, § 6-602.

JUDICIAL DECISIONS**ANALYSIS**

Construction.

Expenses of de facto officer.

Construction.

General rule is that salary of office is incident to title of such office and not to its occupation and exercise by de facto officer. *Dotson v. Cassia County*, 35 Idaho 382, 206 P. 810 (1922).

Fact that de jure officer has been prevented from performing duties of office by presence of de facto officer does not deprive former from recovering compensation. *Dotson v. Cassia County*, 35 Idaho 382, 206 P. 810 (1922).

Expenses of De Facto Officer.

This section does not preclude board of commissioners from allowing de facto officer the amount of expenses incurred by him in behalf of county in the administration of the office. *In re Havird*, 2 Idaho (Hasb.) 687, 24 P. 542 (1890).

Cited in: *Gorman v. Havird*, 141 U.S. 206, 35 L. Ed. 717, 11 S. Ct. 943 (1891).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 27, 280, 440.

59-505. Salary when title to office contested — Certificate of pending suit. — As soon as such proceedings are instituted, the clerk of the court in which they are pending must certify the facts to the officers, whose duty it would otherwise be to draw such warrant or pay such salary.

History.

R.S., § 381; reen. R.C. & C.L., § 278; C.S., § 409; I.C.A., § 57-505.

59-506. Salary suspended during failure to report for moneys collected. — Any officer, or deputy, failing to report in the form prescribed by the state controller for all public moneys collected by him on behalf of the state, shall not be allowed any salary or compensation during the period of such failure.

History.

1913, ch. 42, § 7, p. 146; compiled and reen.

C.L., § 278a; C.S., § 410; I.C.A., § 57-506; am. 1994, ch. 180, § 130, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.
 State controller to prescribe form of report, § 67-1002.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [Jan-

uary 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 130 of S.L. 1994, ch. 180 became effective January 2, 1995.

[59-507] 59-503. Salary of lieutenant governor. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 59-503 [59-507], as added by 1957, ch. 321, § 1,

p. 681, was repealed by S.L. 1977, ch. 178, § 4. For present comparable provisions, see § 59-501.

59-508. Salaries for appointive department heads and other administrative officers. — The salaries of the appointive department heads, division administrators or other administrative officers not otherwise provided for by law, shall be fixed by the officer or authority making such appointment within the limits of appropriations made therefor by the legislature.

History.

1957, ch. 317, § 1, p. 676; am. 1959, ch. 289, § 1, p. 601; am. 1963, ch. 279, § 1, p. 714; am.

1967, ch. 237, § 1, p. 696; am. 1967, ch. 315, § 28, p. 906; am. 1974, ch. 22, § 58, p. 592.

STATUTORY NOTES

Cross References. *

Administrative director of the courts, § 1-611.

Director of department of administration, § 67-5701.

Director of department of agriculture, § 22-101.

Director of department of health and welfare, § 39-104.

Director of department of lands, §§ 58-105, 58-124.

Director of state police, § 67-2901.

Director of department of water resources, § 42-1801.

Effective Dates.

Section 2 of S.L. 1967, ch. 237 provided that the act should take effect from and after December 31, 1970.

Section 29 of S.L. 1967, ch. 315 declared an emergency.

59-509. Honorariums or compensation for members of boards, commissions and councils. — The members of part-time boards, commissions or councils shall receive for each day spent in the actual performance of duties, an honorarium, compensation, or expenses, as provided in the following schedule:

(a) Members shall serve without honorarium, compensation, or expense reimbursement of any kind.

(b) Members shall serve without honorarium or compensation of any kind, but shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(c) Members shall serve without honorarium or compensation of any

kind, but shall be reimbursed for actual and necessary expenses, without being subject to the limits provided in section 67-2008, Idaho Code.

(d) Members shall receive the sum of fifteen dollars (\$15.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(e) Members shall receive the sum of twenty dollars (\$20.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(f) Members shall receive the sum of twenty-five dollars (\$25.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(g) Members shall receive the sum of thirty-five dollars (\$35.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(h) Members shall receive the sum of fifty dollars (\$50.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(i) Members shall receive the sum of seventy-five dollars (\$75.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(j) Members shall receive an honorarium in the sum of fifteen dollars (\$15.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code, unless otherwise provided by statute. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(k) Members shall receive an honorarium in the sum of twenty dollars (\$20.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(l) Members shall receive an honorarium in the sum of twenty-five dollars (\$25.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(m) Members shall receive an honorarium in the sum of thirty-five dollars (\$35.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(n) Members shall receive an honorarium in the sum of fifty dollars (\$50.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(o) Members shall receive an honorarium in the sum of seventy-five dollars (\$75.00) per day, and shall be reimbursed for actual and necessary

expenses, subject to the limits provided in section 67-2008, Idaho Code. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(p) Members shall receive an honorarium in the sum of one hundred dollars (\$100) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(q) Members shall receive the sum of one hundred dollars (\$100) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

History.

I.C., § 59-509, as added by 1980, ch. 247, § 1, p. 582; am. 1996, ch. 66, § 1, p. 198; am.

1997, ch. 320, § 2, p. 944; am. 2006, ch. 269, § 1, p. 838; am. 2008, ch. 80, § 2, p. 208.

STATUTORY NOTES

Prior Laws.

Former § 59-509, which comprised 1957, ch. 317, § 2, p. 676, was repealed by S.L. 1977, ch. 178, § 5.

The 2008 amendment, by ch. 80, added subsection (q).

Amendments.

The 2006 amendment, by ch. 269, added subsection (p).

Effective Dates.

Section 3 of S.L. 1997, ch. 320 declared an emergency. Approved March 24, 1997.

59-510. Salaries of the industrial commission, the state tax commission, and the public utilities commission. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 59-510, as added by 1973, ch. 277, § 4, p. 589; am. 1975, ch. 241, § 1, p. 650; am. 1978, ch.

101, § 3, p. 202; am. 1980, ch. 201, § 1, p. 465; am. 1982, ch. 259, § 1, p. 670, was repealed by S.L. 1998, ch. 358, § 1, effective July 1, 1998.

59-511. Officers to devote entire time to official duties — Exceptions. — Each executive and administrative officer shall devote his entire time to the duties of his office and shall hold no other office or position of profit: provided, that an elective or appointive state officer may be appointed to any office herein created, in which event he shall receive no salary other than by virtue of his elective office, or in the case of an appointive state officer, he shall receive no salary other than by virtue of the appointive office held by him at the time of his appointment to an additional office.

History.

I.C., § 59-511, as added by 1974, ch. 22, § 59, p. 592.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 274, 286.

59-512. Compensation for public service. — No employee in the several departments, employed at a fixed compensation, shall be paid for any extra service performed by such employee in the ordinary course of his employment, unless expressly authorized by law.

Whenever the public interest may be served thereby, an employee of any department, with the written approval of the employing director, may be permitted to accept additional employment by the same, or another department, in any educational program conducted under the supervision of the state board of education or the board of regents of the University of Idaho, when such additional employment is not in the ordinary course of the employment of such employee and will be performed in addition to, and beyond the hours of service required in the ordinary course of employment. The written approval of the employing director shall be filed with the secretary of the state board of examiners together with a statement that such additional employment is not in the course of the employee's employment, and will be performed in addition to the statutory hours of employment.

History.

I.C., § 59-512, as added by S.L. 1974, ch. 22, § 60, p. 592.

STATUTORY NOTES

Cross References.

State board of education, § 33-101 et seq.
State board of examiners, § 67-2001 et seq.
University of Idaho board of regents, § 33-2802.

Effective Dates.

Section 61 of S.L. 1974, ch. 22 provided that the act should take effect on and after July 1, 1974.

59-513. Deferred compensation programs for employees of state or political subdivisions. — The state of Idaho, the state board of education for those employees eligible for participation in the optional retirement programs created in sections 33-107A and 33-107B, Idaho Code, and any county, city, or political subdivision of the state acting through its governing body, is hereby authorized to contract with an employee to defer all or a portion of that employee's income, and may subsequently with the consent of the employee, invest such deferred income in a funding medium for the purpose of funding a deferred compensation program for the employee.

The state board of examiners shall supervise and regulate the deferred compensation program for state employees, and may adopt rules to implement such a program; provided however, that the state board of education shall supervise and regulate any deferred compensation program it establishes and may adopt rules to implement such a program.

The governing body of any county, city, or political subdivision of the state,

shall supervise and regulate the deferred compensation program for its employees.

In no event shall the amount of income an employee elects to defer exceed the total annual salary, or compensation under the existing salary schedule or classification plan applicable to such employee in such year. Any income deferred under such a plan shall continue to be included as regular compensation for the purpose of computing the retirement contributions and pension benefits earned by any employee, but any sum so deferred shall not be included in the computation of any income taxes withheld on behalf of any such employee.

Coverage of an employee under a deferred compensation plan under this section shall not render such employee ineligible for simultaneous membership and participation in the pension systems for public employees which are otherwise provided for.

For the purposes of this section the state controller is authorized to make such deductions from salary for any employee of the state who has authorized such deductions in writing, and the state board of examiners may designate administrative agents for the state of Idaho to execute all necessary agreements pertaining to the deferred compensation program.

For the purposes of this section, the term "employee" includes elected or appointed officials.

History.

I.C., § 59-513, as added by 1977, ch. 195,

§ 2, p. 529; am. 1994, ch. 180, § 131, p. 420; am. 2003, ch. 305, § 1, p. 839.

STATUTORY NOTES

Cross References.

State board of education, § 33-101 et seq.
State board of examiners, § 67-2001 et seq.

Prior Laws.

Former § 59-513, which comprised 1975, ch. 270, § 1, p. 723, was repealed by S.L. 1977, ch. 195, § 1.

Compiler's Notes.

Section 3 of S.L. 1977, ch. 195 read: "The legislature of the state of Idaho desires that the state board of examiners adopt a deferred compensation program which provides for investment in all types of funding media."

Effective Dates.

Section 4 of S.L. 1977, ch. 195 declared an emergency. Approved March 30, 1977.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R.

No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 131 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 2 of S.L. 2003, ch. 305 provides: "This act shall be in full force and effect on and after January 1, 2006, or upon the termination or expiration of the existing restated and amended deferred compensation plan administration agreement implementing the provisions of section 59-513, Idaho Code, whichever occurs first. Provided however, that the State Board of Education may adopt rules to implement the provisions of this act on and after July 1, 2003, so long as such rules do not permit the implementation to occur prior to the effective date of this act." The deferred compensation agreement implementing this section did not terminate or expire prior to January 1, 2006. Thus, pursuant to S.L. 2003, ch. 305, § 2, the 2003 amendment of this section took effect on January 1, 2006.

59-514. Publication of contractee, amount and purpose of personal service contracts — Definition. — (1) The state of Idaho, and all taxing entities within the state of Idaho, shall publish within fifteen (15)

days of entering into any personal service contract, the parties, amount and a one (1) sentence purpose of all such personal service contracts over ten thousand dollars (\$10,000) annual payment, regardless of whether the moneys for such contract are derived from state taxes, local taxes, federal funds, or a combination of such funds; however, when such contracts are entered into with a county, the publication requirements provided in this section are satisfied when the required information is included in the next published monthly statement pursuant to the provisions of section 31-819, Idaho Code. The publication shall be in a newspaper of general circulation within the geographical area wherein such personal service is to be performed.

(2) "Personal service" means performance for remuneration by an individual on a specified contractual basis of specialized professional or consultative expertise germane to administration, maintenance or conduct of governmental activities which require intellectual or sophisticated and varied services, dependent upon facilities, invention, imagination or a specific talent which the state or the taxing entity itself cannot provide or accomplish.

History.

I.C., § 59-514, as added by 1982, ch. 241,
§ 1, p. 627; am. 2009, ch. 193, § 1, p. 627.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 193, added the

proviso at the end of the first sentence in subsection (1).

CHAPTER 6

REPORTS OF STATE OFFICERS

SECTION.

59-601 — 59-613. [Repealed.]

59-601 — 59-607. Reports of state officers. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1899, p. 432, §§ 1, 2; am. 1903, p. 149, §§ 1 to 3; am. R.C., §§ 279, 281; reen. C.L., §§ 279, 281; reen. R.C. & C.L., §§ 280, 281a, 281b; C.S.,

§§ 411 to 415; I.C.A., §§ 57-601 to 57-605; am. 1935, ch. 43, §§ 4 to 6; am. 1955, ch. 98, § 1, p. 220, regarding reports of state officers and state boards of control, were repealed by S.L. 1957, ch. 175, § 7, p. 339.

59-608 — 59-611. Reports of state officers. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1957, ch. 175, §§ 1 to 4, p. 339; am. 1959, ch. 302, §§ to

3, p. 653, were repealed by S.L. 1978, ch. 17, § 1.

59-612. Forwarding of reports to librarian of congress. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised S.L. 1957, ch. 175, § 5, p. 339, concerning forwarding of

reports to Librarian of Congress, was repealed by S.L. 1959, ch. 302, § 4, p. 653.

59-613. Penalty for violation of provisions. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1957, ch.

175, § 6, p. 339, was repealed by S.L. 1978, ch. 17, § 1.

CHAPTER 7**ETHICS IN GOVERNMENT****SECTION.**

59-701. Short title.

59-702. Policy and purpose.

59-703. Definitions.

59-704. Required action in conflicts.

59-704A. Noncompensated public official —
Exception.

SECTION.

59-705. Civil penalty.

59-706. Allowance of claims of ineligibles.
[Repealed.]

59-701. Short title. — This act shall be known and may be cited as the "Ethics in Government Act of 1990."

History.

I.C., § 59-701, as added by 1990, ch. 329, § 2, p. 903.

STATUTORY NOTES**Prior Laws.**

Former § 59-701, which comprised 1915, ch. 10, § 1, p. 40; reen. C.L., § 281g; C.S., § 416; I.C.A., § 57-701; am. 1959, ch. 26, § 1, p. 55, was repealed by S.L. 1990, ch. 329, § 1.

Compiler's Notes.

The term "this act" refers to S.L. 1990, ch. 329, which is compiled as §§ 59-701 to 59-704 and 59-705.

JUDICIAL DECISIONS**Construction With Other Law.**

There was no indication that the Idaho legislature intended to repeal or amend § 67-6506 when it adopted the Ethics in Government Act of 1990, § 59-701 et seq.; thus, the

definition of "conflict of interest" in the Ethics in Government Act did not apply to § 67-6506. *Gooding County v. Wybenga*, 137 Idaho 201, 46 P.3d 18 (2002).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 247 to 255.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 37 et seq.

A.L.R. — Validity and construction of en-

actments requiring public officers or candidates for office to disclose financial conditions and relationships. 37 A.L.R.3d 1338; 22 A.L.R.4th 237.

Validity, construction, and effect of state

constitutional or statutory provision regarding nepotism in the public service. 11 A.L.R.4th 826.

59-702. Policy and purpose. — It is hereby declared that the position of a public official at all levels of government is a public trust and it is in the public interest to:

(1) Protect the integrity of government throughout the state of Idaho while at the same time facilitating recruitment and retention of personnel needed within government;

(2) Assure independence, impartiality and honesty of public officials in governmental functions;

(3) Inform citizens of the existence of personal interests which may present a conflict of interest between an official's public trust and private concerns;

(4) Prevent public office from being used for personal gain contrary to the public interest;

(5) Prevent special interests from unduly influencing governmental action; and

(6) Assure that governmental functions and policies reflect, to the maximum extent possible, the public interest.

History.

I.C., § 59-702, as added by 1990, ch. 329, § 2, p. 903.

STATUTORY NOTES

Prior Laws.

Former § 59-702, which comprised 1915, ch. 10, § 2, p. 41; reen. C.L., § 281h; C.S.,

§ 417; I.C.A., § 57-702, was repealed by S.L. 1990, ch. 329, § 1.

59-703. Definitions. — For purposes of this chapter:

(1) "Official action" means any decision on, or proposal, consideration, enactment, defeat, or making of any rule, regulation, rate-making proceeding or policy action or nonaction by a governmental body or any other policy matter which is within the official jurisdiction of the governmental body.

(2) "Business" means any undertaking operated for economic gain, including, but not limited to, a corporation, partnership, trust, proprietorship, firm, association or joint venture.

(3) "Business with which a public official is associated" means any business of which the public official or member of his household is a director, officer, owner, partner, employee or holder of stock over five thousand dollars (\$5,000) or more at fair market value.

(4) "Conflict of interest" means any official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit of the person or a member of the person's household, or a business with which the person or a member of the person's household is associated, unless the pecuniary benefit arises out of the following:

(a) An interest or membership in a particular business, industry, occu-

pation or class required by law as a prerequisite to the holding by the person of the office or position;

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of an industry or occupation group in which the person, or a member of the person's household or business with which the person is associated, is a member or is engaged;

(c) Any interest which the person has by virtue of his profession, trade or occupation where his interest would be affected to the same degree as that of a substantial group or class of others similarly engaged in the profession, trade or occupation;

(d) Any action by a public official upon any revenue measure, any appropriation measure or any measure imposing a tax, when similarly situated members of the general public are affected by the outcome of the action in a substantially similar manner and degree.

(5) "Economic gain" means increase in pecuniary value from sources other than lawful compensation as a public official.

(6) "Governmental entity" means:

(a) The state of Idaho and all agencies, commissions and other governmental bodies of the state; and

(b) Counties and municipalities of the state of Idaho, all other political subdivisions including, but not limited to, highway districts, planning and zoning commissions or governmental bodies not specifically mentioned in this chapter.

(7) "Members of a household" means the spouse and dependent children of the public official and/or persons whom the public official is legally obligated to support.

(8) "Person" means an individual, proprietorship, partnership, association, trust, estate, business trust, group or corporation, whether operated for profit or not, and any other legal entity, or agent or servant thereof, or a governmental entity.

(9) "Public office" means any position in which the normal and usual duties are conducted on behalf of a governmental entity.

(10) "Public official" means any person holding public office in the following capacity:

(a) As an elected public official meaning any person holding public office of a governmental entity by virtue of an elected process, including persons appointed to a vacant elected office of a governmental entity, excluding members of the judiciary; or

(b) As an elected legislative public official meaning any person holding public office as a legislator; or

(c) As an appointed public official meaning any person holding public office of a governmental entity by virtue of formal appointment as required by law; or

(d) As an employed public official meaning any person holding public office of a governmental entity by virtue of employment, or a person employed by a governmental entity on a consultive basis.

History.

I.C., § 59-703, as added by 1990, ch. 329,
§ 2, p. 903; am. 1999, ch. 145, § 1, p. 414.

59-704. Required action in conflicts. — A public official shall not take any official action or make a formal decision or formal recommendation concerning any matter where he has a conflict of interest and has failed to disclose such conflict as provided in this section. Disclosure of a conflict does not affect an elected public official's authority to be counted for purposes of determining a quorum and to debate and to vote on the matter, unless the public official requests to be excused from debate and voting at his or her discretion. In order to determine whether a conflict of interest exists relative to any matter within the scope of the official functions of a public official, a public official may seek legal advice from the attorney representing that governmental entity or from the attorney general or from independent counsel. If the legal advice is that no real or potential conflict of interest exists, the public official may proceed and shall not be subject to the prohibitions of this chapter. If the legal advice is that a real or potential conflict may exist, the public official:

(1) If he is an elected legislative public official, he shall disclose the nature of the potential conflict of interest and/or be subject to the rules of the body of which he/she is a member and shall take all action required under such rules prior to acting on the matter. If a member requests to be excused from voting on an issue which involves a conflict or a potential conflict, and the body of which he is a member does not excuse him, such failure to excuse shall exempt that member from any civil or criminal liability related to that particular issue.

(2) If he is an elected state public official, he shall prepare a written statement describing the matter required to be acted upon and the nature of the potential conflict, and shall file such statement with the secretary of state prior to acting on the matter. A public official may seek legal advice from the attorney representing that agency or from the attorney general or from independent counsel. The elected public official may then act on the advice of the agency's attorney, the attorney general or independent counsel.

(3) If he is an appointed or employed state public official, he shall prepare a written statement describing the matter to be acted upon and the nature of the potential conflict, and shall deliver the statement to his appointing authority. The appointing authority may obtain an advisory opinion from the attorney general or from the attorney representing that agency. The public official may then act on the advice of the attorney general, the agency's attorney or independent counsel.

(4) If he is an elected public official of a county or municipality, he shall disclose the nature of a potential conflict of interest prior to acting on a matter and shall be subject to the rules of the body of which he/she is a member and take all action required by the rules prior to acting on the matter. If a member requests to be excused from voting on an issue which involves a conflict or a potential conflict, and the body of which he is a member does not excuse him, such failure to excuse shall exempt that member from any civil or criminal liability related to that particular issue.

The public official may obtain an advisory opinion from the attorney general or the attorney for the county or municipality or from independent counsel. The public official may then act on the advice of the attorney general or attorney for the county or municipality or his independent counsel.

(5) If he is an appointed or employed public official of a county or municipality, he shall prepare a written statement describing the matter required to be acted upon and the nature of the potential conflict, and shall deliver the statement to his appointing authority. The appointing authority may obtain an advisory opinion from the attorney for the appointing authority, or, if none, the attorney general. The public official may then act on the advice of the attorney general or attorney for the appointing authority or independent counsel.

(6) Nothing contained herein shall preclude the executive branch of state government or a political subdivision from establishing an ethics board or commission to perform the duties and responsibilities provided for in this chapter. Any ethics board or commission so established shall have specifically stated powers and duties including the power to:

- (a) Issue advisory opinions upon the request of a public official within its jurisdiction;
- (b) Investigate possible unethical conduct of public officials within its jurisdiction and conduct hearings, issue findings, and make recommendations for disciplinary action to a public official's appointing authority;
- (c) Accept complaints of unethical conduct from the public and take appropriate action.

History.

I.C., § 59-704, as added by 1990, ch. 329,
§ 2, p. 903.

*
STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Secretary of state, § 67-901 et seq.

59-704A. Noncompensated public official — Exception. — When a person is a public official by reason of his appointment or election to a governing board of a governmental entity for which the person receives no salary or fee as compensation for his service on said board, he shall not be prohibited from having an interest in any contract made or entered into by the board of which he is a member, if he strictly observes the procedure set out in section 18-1361A, Idaho Code.

History.

I.C., § 59-704A, as added by 1992, ch. 121,
§ 3, p. 398.

OPINIONS OF ATTORNEY GENERAL

The specific provisions of § 33-507 which prohibit a member of the board of trustees of a school district from having a pecuniary interest in any contract pertaining to the

maintenance or conduct of the school district takes precedence over the general conflict of interest law found in this section. OAG 93-10.

59-705. Civil penalty. — (1) Any public official who intentionally fails to disclose a conflict of interest as provided for in section 59-704, Idaho Code, shall be guilty of a civil offense, the penalty for which may be a fine not to exceed five hundred dollars (\$500), provided that the provisions of this subsection shall not apply to any public official where the governmental entity on which said official serves has put into operation an ethics commission or board described in section 59-704(6), Idaho Code.

(2) The penalty prescribed in subsection (1) of this section does not limit the power of either house of the legislature to discipline its own members, nor limit the power of governmental entities, including occupational or professional licensing bodies, to discipline their members or personnel. A violation of the provisions of this chapter shall not preclude prosecution and conviction for any criminal violation that may have been committed.

History.

I.C., § 59-705, as added by 1990, ch. 329, § 2, p. 903.

59-706. Allowance of claims of ineligible. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 59-706, as added by 1990, ch. 329, § 2, p. 903,

was repealed by S.L. 1990, ch. 328, § 5, p. 899.

CHAPTER 8

BONDS OF OFFICERS AND PUBLIC EMPLOYEES

SECTION.

- 59-801. Short title.
- 59-802. Definitions.
- 59-803. Surety bond required.
- 59-804. Surety bonds — Blanket surety bond — Crime insurance terms and conditions.
- 59-805. Bond required under other laws.
- 59-806. Bonds of county officers — Approval, filing, and recording — Insufficiency of sureties — Proceedings.
- 59-807. Insufficiency of sureties — Additional bond.
- 59-808. Original bond not discharged by additional bond.
- 59-809. Record of official bonds.
- 59-810. Sureties for less than penal sum.
- 59-811. Custody of official bonds — Certified copies given.
- 59-812. Form of bond.
- 59-813. Extent of sureties' liability.

SECTION.

- 59-814. Extent of sureties' liability — Duties subsequently imposed.
- 59-815. Suits by persons injured.
- 59-816. Successive suits by persons injured.
- 59-817. Defects in bond not to affect liability.
- 59-818. Action on either bond.
- 59-819. Separate judgment on bond.
- 59-820. Contribution between sureties.
- 59-821. Discharge of sureties by new bond.
- 59-822. Vacancies — Bond of appointee.
- 59-823. Release of sureties.
- 59-824. Release of sureties — Application for release.
- 59-825. Release of sureties — Service of statement.
- 59-826. Release of sureties — Office declared vacant.
- 59-827. Release of sureties — Remaining sureties liable.
- 59-828. Release of sureties — Accrued liabilities unaffected.

SECTION.

59-829. Action on bonds — Lis pendens.
59-830. Lis pendens — Filing and recording
— Effect — Clerk's fees.
59-831. Notification of expiration or failure to

SECTION.

furnish official bond — Collec-
tion and deposit of unearned
premiums.
59-832 — 59-837. [Repealed.]

59-801. Short title. — This act may be cited as the “Surety Bond Act.”

History.

I.C., § 59-801, as added by 1971, ch. 136,
§ 56, p. 522.

STATUTORY NOTES

Prior Laws.

Former §§ 59-801 to 59-831, which com-
prised 1867, p. 50, §§ 1 to 3, 5 to 13, 16, 20 to
24, 26 to 35; Act Feb. 3, 1887; R.S., §§ 390 to
424; R.C., and C.L., §§ 282 to 311; C.S.,
§§ 418 to 447; I.C.A., §§ 59-801 to 59-830;
am. 1943, ch. 15, § 1, p. 143; regarding bonds
of public officers, were repealed by S.L. 1971,
ch. 136, § 55.

136, which is codified as §§ 1-408, 1-1102,
22-3311, 22-3512, 22-3608, 22-3708, 23-207,
23-209, 25-127, 25-129, 25-1102, 25-1103, 25-
2612A, 33-2804, 38-409, 41-204, 41-3502, 42-
1801, 54-912, 54-1209, 58-124, 59-801 to 59-
831, 59-916, 67-912, 67-1005, 67-1219, 67-
1220, 67-1402, 67-1501, 72-902, 72-1335, and
72-1346. Probably, the reference should be to
“this chapter,” being chapter 8, title 59, Idaho
Code.

Compiler's Notes.

The term “this act” refers to S.L. 1971, ch.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Offi-
cers and Employees, § 130 et seq.

C.J.S. — 67 C.J.S., Officers and Public
Employees, § 355 et seq.

59-802. Definitions. — (1) “Administrator” means the administrator of
the division of insurance management in the department of administration,
as provided by section 67-5760, Idaho Code.

(2) “Agency” means each department, institution, board, bureau, commis-
sion or committee of the government of the state, including state educa-
tional institutions, the supreme court and district courts, but does not
include any political subdivisions of the state.

(3) “Blanket surety bond” means a schedule or blanket corporate surety
covering all or any group of public officials or employees of the state or of an
individual political subdivision. Any blanket or schedule bond provided,
issued in lieu of individual surety bonds, shall contain all terms and
conditions required for an individual surety bond as herein provided.

(4) “Crime insurance” means insurance which indemnifies the assured
public entity against losses from employee dishonesty, losses inside and
outside the premises, losses from money orders and counterfeit paper
currency, losses from depositors’ forgery, and/or generally assures the
fidelity and faithful performance of public officials or employees holding
positions of public trust. Any crime insurance issued to the state or any of its
political subdivisions, in order to be considered equivalent to the require-
ments contained in this chapter for surety bonds, must include stipulation
by the insurer that such crime insurance coverage is deemed to provide
coverage for the terms and responsibilities of public officials and employees
as outlined in chapter 8, title 59, Idaho Code.

(5) "Political subdivision" means any county, city, municipal corporation, health district, school district, irrigation district, special improvement or taxing district, or any other political subdivision or public corporation, or as currently defined in section 6-902(2), Idaho Code. As used in this chapter, the terms "county" and "city" also mean state licensed hospitals and attached nursing homes established by counties pursuant to chapter 36, title 31, Idaho Code, or jointly by cities and counties pursuant to chapter 37, title 31, Idaho Code.

(6) "Public official or employee" means each elected or appointed officer of the state or a political subdivision of the state and each officer and employee of an agency or a political subdivision.

(7) "Surety bond" means a bond or surety issued by a corporate surety company authorized to do business in this state in an amount fixed by the administrator or governing body of a political subdivision to an individual public official or employee, which shall be payable to the state or a political subdivision, and whenever possible, conditioned on honesty and the faithful performance of his duties during the employment or term of office and until his successor is elected or appointed and is qualified, and that he will properly account for all money and property received in his official capacity as a public official or as an employee. The bond may contain other terms and conditions deemed appropriate by the administrator or governing body of the political subdivision to protect the state or political subdivision from loss.

History.

I.C., § 59-802, as added by 1971, ch. 136, § 57, p. 522; am. 1974, ch. 34, § 12, p. 988;

am. 1974, ch. 252, § 12, p. 1647; am. 1980, ch. 106, § 6, p. 231; am. 1991, ch. 281, § 1, p. 724.

STATUTORY NOTES

Prior Laws.

Former § 59-802 was repealed. See Prior Laws, § 59-801.

Compiler's Notes.

The division of insurance management, re-

ferred to subsection (1), was abolished in 1992. The duties of that agency are now performed by the division of insurance and internal support in the department of administration. See <http://adm.idaho.gov/internalmgmt>.

59-803. Surety bond required. — (1) With the advice of the head of each agency, and taking into consideration employee duties and responsibilities, the administrator shall designate individually or by class the employees required to give official bond to the state and the amount of the bond required for each individual or class.

(2) If some other law sets forth an amount in which an employee is to be bonded, the administrator shall procure a bond in at least the amount set forth in such law, but may require a bond in a greater amount than as set forth in such law if he determines, in accordance with the procedures set forth in subsection (1) above, that it would be in the best interest of the state to require a bond in a greater amount.

(3) The premium on the official surety bonds procured by the administrator in accordance with subsections (1) and (2) above shall be paid from

funds appropriated or available for the employer or agency in the manner prescribed in section 41-3503, Idaho Code.

(4) The administrator shall procure all official bonds for employees, and shall, by negotiations or otherwise, endeavor to purchase the best coverage which can be obtained for the least cost.

History.

I.C., § 59-803, as added by 1971, ch. 136, § 58, p. 522; am. 1974, ch. 34, § 13, p. 988;

am. 1974, ch. 252, § 13, p. 1647; am. 1980, ch. 106, § 7, p. 231.

STATUTORY NOTES

Cross References.

Clerk of Supreme Court, official bond, § 1-408.

Conservators, bonds, § 15-5-411.

Deputy treasurer, bond, § 67-1219.

Executors and administrators, bonds, §§ 15-3-603 to 15-3-606.

Receivers, bonds, § 8-604.

Trustees, bonds, § 15-7-304.

Prior Laws.

Former § 59-803 was repealed. See Prior Laws, § 59-801.

JUDICIAL DECISIONS

Duties Covered by Bond.

The faithful performance blanket bond coverage found in the state's insurance policy covered the officer's duty to administer oaths under Idaho Misdemeanor Crim. Rule 12, where administering the oath for the affidavit

was reasonably necessary to accomplish the purpose of law enforcement, and administering an oath was not outside the scope of the officer's defined duties. *State v. Kappelman*, 114 Idaho 136, 754 P.2d 449 (Ct. App.), cert. denied, 114 Idaho 797, 761 P.2d 312 (1988).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 355 et seq.

59-804. Surety bonds — Blanket surety bond — Crime insurance terms and conditions. — (1) Each official surety bond, blanket surety bond or suitable crime insurance policy of a public official or an employee shall be payable to the state or appropriate political subdivision, and shall be in the appropriate form as defined in section 59-802, Idaho Code. The surety bond, blanket surety bond, or suitable crime insurance shall be executed by a corporate surety company authorized to do business in this state in the amount fixed by the administrator, or by the governing body of the political subdivision.

(2) In lieu of individual bonds, the administrator or the governing body of a political subdivision may elect to provide a schedule or blanket corporate surety bond, or suitable crime insurance covering all or any group of public officials or employees whenever the premiums would be less than the aggregate of premiums chargeable under individual coverage. Any blanket or schedule bond or crime insurance provided shall contain all terms and conditions required in subsection (1) of this section or as defined in section 59-802, Idaho Code.

(3) All official bonds of employees of the state and its agencies shall be approved by the governor and shall be approved as to form and legal sufficiency by the attorney general and shall be filed with the secretary of

state without cost, except that the bond of the secretary of state or a certified copy of any master, blanket or schedule bond including the secretary of state shall be filed with the state controller.

(4) All official surety bonds, blanket surety bonds, or suitable crime insurance coverage of public officials or employees of a political subdivision shall be approved by the governing body of the political subdivision. After the governing body approves the form and legal sufficiency, the bonds or policies shall be filed with the clerk or secretary of the political subdivision.

History.

I.C., § 59-804, as added by 1971, ch. 136, § 59, p. 522; am. 1974, ch. 34, § 14, p. 988;

am. 1974, ch. 252, § 14, p. 1647; am. 1980, ch. 106, § 8, p. 231; am. 1991, ch. 281, § 2, p. 724; am. 1994, ch. 180, § 132, p. 420.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.
Secretary of state, § 67-901 et seq.
State controller, § 67-1001 et seq.

Prior Laws.

Former § 59-804 was repealed. See Prior Laws, § 59-801.

Effective Dates.

Section 15 of S.L. 1974, ch. 34 provided that the act should take effect on and after July 1, 1974.

Section 15 of S.L. 1974, ch. 252 provided

that the act should take effect on and after July 2, 1974.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 132 of S.L. 1994, ch. 180 became effective January 2, 1995.

JUDICIAL DECISIONS

ANALYSIS

Duties covered by bond.
Law enforcement officers.

Duties Covered by Bond.

If an officer's duty includes administering oaths then a faithful performance blanket bond will also cover this duty, and execution of a specific surety bond by each person appointed to administer oaths is not required. *State v. Kappelman*, 114 Idaho 136, 754 P.2d 449 (Ct. App. 1988), cert. denied, 114 Idaho 797, 761 P.2d 312 (1988).

erage found in the state's insurance policy covered the officer's duty to administer oaths under Idaho Misdemeanor Crim. Rule 12, where administering the oath for the affidavit was reasonably necessary to accomplish the purpose of law enforcement. *State v. Kappelman*, 114 Idaho 136, 754 P.2d 449 (Ct. App.), cert. denied, 114 Idaho 797, 761 P.2d 312 (1988).

Law Enforcement Officers.

The faithful performance blanket bond cov-

DECISIONS UNDER PRIOR LAW

ANALYSIS

Defective bond enforced.
Duties covered by bond.
Liability for stolen money.
Liability of assessor.

Defective Bond Enforced.

Failure of official bond to contain all of

statutory conditions required of such bond was no defense to an action to enforce a

liability admittedly covered by the bond. *People v. Slocum*, 1 Idaho 62 (1866).

Failure of the principal on an official bond to sign the same as principal did not invalidate the bond. *State v. McDonald*, 4 Idaho 468, 40 P. 312 (1895).

Duties Covered by Bond.

Official bond of county treasurer protects funds coming into his hands for collection of irrigation district funds by county officials. *Hurlebaus v. American Falls Reservoir Dist.*, 49 Idaho 158, 286 P. 598 (1930).

Liability for Stolen Money.

Under constitutional provision and statutes, surety on county assessor's bond was

liable to county for loss of personal property tax money and motor vehicle license money collected by assessor and stolen from assessor without assessor's fault. *Bonneville County v. Standard Accident Ins. Co.*, 57 Idaho 657, 67 P.2d 904 (1937).

Liability of Assessor.

Under constitutional provisions and statutes, county assessor was chargeable with all money coming into his possession in payment of personal property taxes and for motor vehicle licenses and would be given credit therefor only when he actually paid such money into county treasury. *Bonneville County v. Standard Accident Ins. Co.*, 57 Idaho 657, 67 P.2d 904 (1937).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 130, 131, 136.

59-805. Bond required under other laws. — Whenever a public official or an employee is required by another law to post bond or surety as a prerequisite to entering employment or assuming office, the requirement is met when bond coverage or suitable crime insurance coverage is provided for the office or position under provisions of the Surety Bond Act.

History.

I.C., § 59-805, as added by 1971, ch. 136, § 60, p. 522; am. 1991, ch. 281, § 3, p. 724.

STATUTORY NOTES

Prior Laws.

Former § 59-805 was repealed. See Prior Laws, § 59-801.

Compiler's Notes.

For the meaning of "Surety Bond Act", see § 59-801 and notes thereto.

Effective Dates.

Section 4 of S.L. 1991, ch. 281 declared an emergency and provided that the act should be in full force and effect on and after passage and approval, retroactive to January 1, 1991. Approved April 4, 1991.

59-806. Bonds of county officers — Approval, filing, and recording — Insufficiency of sureties — Proceedings. — It shall be the duty of the board of county commissioners of each county to periodically, but not less than twice yearly, review, examine, and inquire into the sufficiency of all of the official bonds given or to be given by any county or precinct officer as required by law, and if it shall appear that any one or more of the sureties, or any of them, has died, moved from the state, become insolvent, or from any other cause has become incompetent or insufficient surety on such bond, the said board of county commissioners shall cause such county or precinct officer to be summoned to appear before the board on a day to be named in said summons, not less than three (3) nor more than ten (10) days after date, to appear and show cause why he should not be required to give a new bond with sufficient security, and if at the appointed time he shall fail to satisfy

said board as to the sufficiency of the present security, an order shall be entered of record by said board requiring such county or precinct officer, to file in the office of the county clerk within ten (10) days, a new bond to be approved as required by law, and in the event such bond is found not sufficient, and a new bond is not filed as ordered, the fact shall be certified by the board of county commissioners to the district court of the county, and shall also be certified to the prosecuting attorney of the county and it shall thereupon become the duty of the prosecuting attorney to cause a hearing to be had in said district court for the purpose of adjudicating and declaring a vacancy in such office, in the event the district court determines, after a hearing, that the bond is in fact insufficient, and such officer fails within five (5) days after the district court has so found to file a new bond with sufficient surety as required by law. Upon the entry of such decree of vacancy it shall thereupon become the duty of the appointing power to fill such office in the manner provided by law.

History.

I.C., § 59-806, as added by 1971, ch. 136,
§ 61, p. 522.

STATUTORY NOTES**Cross References.**

Official bonds to be recorded by county recorder, § 31-2402.
Index of official bonds, § 31-2404.

Prior Laws.

Former § 59-806 was repealed. See Prior Laws, § 59-801.

JUDICIAL DECISIONS**Approval of Bonds.**

It is the duty of board of county commissioners and not of county attorney to approve

official bonds. *Miller v. Smith*, 7 Idaho 204, 61 P. 824 (1900).

59-807. Insufficiency of sureties — Additional bond. — The additional bond must be in such penalty as directed by the court, judge, board, officer or other person, and in all other respects similar to the original bond, and approved by and filed with the same officer as required in case of the approval and filing of the original bond. Every such additional bond so filed and approved is of like force and obligation upon the principal and sureties therein, from the time of its execution, and subjects the officer and his sureties to the same liabilities, suits, and actions as are prescribed respecting the original bonds of officers.

History.

I.C., § 59-807, as added by 1971, ch. 136,
§ 62, p. 522.

STATUTORY NOTES**Prior Laws.**

Former § 59-807 was repealed. See Prior Laws, § 59-801.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, § 134.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 356.

59-808. Original bond not discharged by additional bond. — In no case is the original bond discharged or affected when an additional bond has been given, but the same remains of like force and obligation as if such additional bond had not been given.

History.

I.C., § 59-808, as added by 1971, ch. 136, § 63, p. 522.

STATUTORY NOTES**Prior Laws.**

Former § 59-808 was repealed. See Prior Laws, § 59-801.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 130, 134, 359.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 365 to 367.

59-809. Record of official bonds. — Official bonds, after having been approved, must be recorded in a book kept for that purpose, and entitled "Record of Official Bonds."

History.

I.C., § 59-809, as added by 1971, ch. 136, § 64, p. 522.

STATUTORY NOTES**Prior Laws.**

Former § 59-809 was repealed. See Prior Laws, § 59-801.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, § 134.

59-810. Sureties for less than penal sum. — When the penal sum of any bond required to be given amounts to more than one thousand dollars (\$1,000), the sureties may become severally liable for portions of not less than five hundred dollars (\$500) thereof, making in the aggregate at least two (2) sureties for the whole penal sum; and if any such bond becomes forfeited, an action may be brought thereon against all or any number of the obligors, and judgment entered against them, either jointly or severally, as they may be liable. The judgment must not be entered against a surety severally bonded for a greater sum than that for which he is specially liable

by the terms of the bond. Each surety is liable to contribution to his cosureties in proportion to the amount for which he is liable.

History.

I.C., § 59-810, as added by 1971, ch. 136,
§ 65, p. 522.

STATUTORY NOTES

Prior Laws.

Former § 59-810 was repealed. See Prior
Laws, § 59-801.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, § 134.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 356.

59-811. Custody of official bonds — Certified copies given. — Every officer with whom official bonds are filed must carefully keep and preserve the same, and give certified copies thereof to any person demanding the same, upon being paid the same fees as are allowed by law for certified copies of papers in other cases.

History.

I.C., § 59-811, as added by 1971, ch. 136,
§ 66, p. 522.

STATUTORY NOTES

Prior Laws.

Former § 59-811 was repealed. See Prior
Laws, § 59-801.

RESEARCH REFERENCES

Am. Jur. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 13, 19.

59-812. Form of bond. — All official bonds must be in form joint and several, and made payable to the state of Idaho in such penalty and with such conditions as required by this chapter, or the law creating or regulating the duties of the office.

History.

I.C., § 59-812, as added by 1971, ch. 136,
§ 67, p. 522.

STATUTORY NOTES

Prior Laws.

Former § 59-812 was repealed. See Prior
Laws, § 59-801.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 134, 135.

59-813. Extent of sureties' liability. — Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein for any and all breaches of the conditions thereof committed during the time such officer continues to discharge any of the duties of or hold the office, and whether such breaches are committed or suffered by the principal officer, his deputy, or clerk.

History.

I.C., § 59-813, as added by 1971, ch. 136, § 68, p. 522.

STATUTORY NOTES

Prior Laws.

Former § 59-813 was repealed. See Prior Laws, § 59-801.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Acts of deputies.
Delinquencies during former term.
Interest.
Joint torts.
Recovery for wrongful death.
Test of sureties' liability. *
Unlawful arrest.

Acts of Deputies.

Seizure and sale by deputy sheriff, under a lawful writ of attachment, of goods worth three times amount of plaintiff's claim, constituted a breach of sheriff's bond for which his sureties were liable. *Work v. Kinney*, 7 Idaho 460, 63 P. 596 (1900).

Officer was liable on his bond for acts of his deputy, done in his official capacity. *Works v. Byrom*, 22 Idaho 794, 128 P. 551 (1912).

Delinquencies During Former Term.

Sureties on sheriff's bond were not liable for delinquencies and defalcations of sheriff during a former term of office. *Work v. Kinney*, 8 Idaho 771, 71 P. 477 (1902).

Interest.

Interest commenced to run against surety as soon as principal had committed a breach which created a liability against him. *State ex rel. Allen v. Title Guar. & Sur. Co.*, 27 Idaho 752, 152 P. 189 (1915), appeal dismissed, 240 U.S. 136, 36 S. Ct. 345, 60 L. Ed. 2d 566 (1916).

Joint Torts.

Where plaintiff filed suit for damages to her person and character, against sheriff and superintendent of insane asylum, as result of an alleged conspiracy between the two defendants, sureties of each defendant were liable for damage sustained, and sureties could be joined as parties defendant. *Lorang v. Hays*, 69 Idaho 440, 209 P.2d 733 (1949).

Recovery for Wrongful Death.

Heirs could recover against sheriff and sheriff's deputy's sureties for wrongful killing of person whom policeman and deputy sheriff sought to arrest, as against contention invoking wrongful death statute authorizing actions only against tortfeasor or his employer; action against sureties being *ex contractu* and requiring no survival statute. *Helgeson v. Powell*, 54 Idaho 667, 34 P.2d 957 (1934).

Test of Sureties' Liability.

Sheriff and sheriff's deputy's sureties were liable for wrongful shooting by policeman of person whom policeman and deputy sheriff

unlawfully sought to arrest without warrant; test of sureties' liability being whether policeman and deputy would have acted if they had not been officers, and it being immaterial, as regards sureties' liability, whether officers act by virtue of their office or merely under color of office. *Helgeson v. Powell*, 54 Idaho 667, 34 P.2d 957 (1934).

sheriff wearing officers' stars and carrying guns approached deceased and policeman merely called to him to stop, manner of attempting to make arrest without warrant was unlawful under statute, as regarded officers' and sureties' liability. *Helgeson v. Powell*, 54 Idaho 667, 34 P.2d 957 (1934).

Unlawful Arrest.

Where ununiformed policeman and deputy

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 351 to 354.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 358 to 364.

59-814. Extent of sureties' liability — Duties subsequently imposed. — Every such bond is in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required of such officer by any law enacted subsequently to the execution of such bond, and such condition must be expressed therein.

History.

I.C., § 59-814, as added by 1971, ch. 136, § 69, p. 522.

STATUTORY NOTES

Prior Laws.

Former § 59-814 was repealed. See Prior Laws, § 59-801.

JUDICIAL DECISIONS

Duties Covered by Bond.

Duties imposed on state treasurer to receive and disburse funds of irrigation district in payment of district's bonds and obligations of contracts with United States were official acts within contemplation of laws that provided bond and sureties liability thereunder. *Hurlebaus v. American Falls Reservoir Dist.*, 49 Idaho 158, 286 P. 598 (1930).

A surety company can be held liable under a general bond, for a duty imposed upon an officer subsequent to the issuance of the bond, even though the duty was imposed by Idaho Misdemeanor Crim. Rule 12 rather than a statute. *State v. Kappelman*, 114 Idaho 136, 754 P.2d 449 (Ct. App.), cert. denied, 114 Idaho 797, 761 P.2d 312 (1988).

59-815. Suits by persons injured. — Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the state of Idaho, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity, and any person so injured or aggrieved may bring suit on such bond, in his own name, without an assignment thereof.

History.

I.C., § 59-815, as added by 1971, ch. 136, § 70, p. 522.

STATUTORY NOTES

Prior Laws.

Former § 59-815 was repealed. See Prior Laws, § 59-801.

JUDICIAL DECISIONS

ANALYSIS

Rights of several claimants.
Several liability.

Rights of Several Claimants.

Although penalty of bond was less than total amount of claims against officer, one who had recovered judgment for the full amount of his claim need not share pro rata with other claimants who had not even filed suits. *Power County v. Fidelity & Deposit Co.*, 44 Idaho 609, 260 P. 152 (1927).

Several Liability.

Under joint and several bond, suit could be maintained against either principal or surety, severally. *State v. American Sur. Co.*, 26 Idaho 652, 145 P. 1097 (1914).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 480 to 495.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 371 to 385.

59-816. Successive suits by persons injured. — No such bond is void on the first recovery of a judgment thereon; but suit may be afterward brought, from time to time, and judgment recovered thereon by the state of Idaho, or by any person to whom a right of action has accrued, against such officer and his sureties, until the whole penalty of the bond is exhausted.

History.

I.C., § 59-816, as added by 1971, ch. 136, § 71, p. 522.

STATUTORY NOTES

Prior Laws.

Former § 59-816 was repealed. See Prior Laws, § 59-801.

JUDICIAL DECISIONS

Collective Action.

State may sue in one action for the benefit of all obligees. *State ex rel. Allen v. Title Guar.*

& Sur. Co., 27 Idaho 752, 152 P. 189 (1915), appeal dismissed, 240 U.S. 136, 36 S. Ct. 345, 60 L. Ed. 2d 566 (1916).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, § 480.

59-817. Defects in bond not to affect liability. — Whenever an official bond does not contain the substantial matter or conditions required by law, or there are any defects in the approval or filing thereof, it is not void

so as to discharge such officer and his sureties; but they are equitably bound to the state, or a party interested, and the state or such party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval or filing, and recover the proper and equitable demand or damages from such officer and the persons who intended to become, and were, included as sureties in such bond.

History.

I.C., § 59-817, as added by 1971, ch. 136,
§ 72, p. 522.

STATUTORY NOTES**Prior Laws.**

Former § 59-817 was repealed. See Prior Laws, § 59-801.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, § 133, 134.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 186.

59-818. Action on either bond. — The officer and his sureties are liable to any party injured by the breach of any condition of any official bond, after the execution of the additional bond, upon either or both bonds, and such party may bring his action upon either bond, or he may bring separate actions on the bonds respectively, and he may allege the same cause of action, and recover judgment therefor in each suit.

History.

I.C., § 59-818, as added by 1971, ch. 136,
§ 73, p. 522.

STATUTORY NOTES**Prior Laws.**

Former § 59-818 was repealed. See Prior Laws, § 59-801.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 480 to 495.

59-819. Separate judgment on bond. — If separate judgments are recovered on the bonds by such party for the same cause of action, he is entitled to have execution issued on such judgments respectively, but he must only collect, by execution or otherwise, the amount actually adjudged to him on the same causes of action in one (1) of the suits, together with the costs of both suits.

History.

I.C., § 59-819, as added by 1971, ch. 136,
§ 74, p. 522.

STATUTORY NOTES

Prior Laws.

Former § 59-819 was repealed. See Prior Laws, § 59-801.

59-820. Contribution between sureties. — Whenever the sureties on either bond have been compelled to pay any sum of money on account of the principal obligor therein, they are entitled to recover, in any court of competent jurisdiction, of the sureties on the remaining bond, a distributive part of the sum thus paid, in the proportion which the penalties of such bonds bear one to the other and to the sums thus paid respectively.

History.

I.C., § 59-820, as added by 1971, ch. 136, § 75, p. 522.

STATUTORY NOTES

Prior Laws.

Former § 59-820 was repealed. See Prior Laws, § 59-801.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, § 495.

59-821. Discharge of sureties by new bond. — Whenever any sureties on the official bond of any officer wish to be discharged from their liability, they and such officer may procure the same to be done if such officer will execute a new bond, with sufficient sureties, in like form, penalty, and conditions, and to be approved and filed, as the original bond. Upon the filing and approval of the new bond, such first sureties are exonerated from all further liability, but their bond remains in full force as to all liabilities incurred previous to the approval of such new bond. The liability of the sureties in such new bond is in all respects the same, and may be enforced in like manner as the liability of the sureties in the original bond.

History.

I.C., § 59-821, as added by 1971, ch. 136, § 76, p. 522.

STATUTORY NOTES

Prior Laws.

Former § 59-821 was repealed. See Prior Laws, § 59-801.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 368 to 370.

59-822. Vacancies — Bond of appointee. — Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as hereinbefore provided.

History.

I.C., § 59-822, as added by 1971, ch. 136,
§ 77, p. 522.

STATUTORY NOTES

Prior Laws.

Former § 59-822 was repealed. See Prior Laws, § 59-801.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, § 130.

59-823. Release of sureties. — Any surety on the official bond of a city, district, precinct, county or state officer may be relieved from liabilities thereon afterward accruing by complying with the provisions of the three (3) sections following.

History.

I.C., § 59-823, as added by 1971, ch. 136,
§ 78, p. 522.

STATUTORY NOTES

Prior Laws.

Former § 59-823 was repealed. See Prior Laws, § 59-801.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, § 368.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 368 to 370.

59-824. Release of sureties — Application for release. — Such surety must file with the judge, court, board, officer or other person authorized by law to approve such official bond, a statement in writing setting forth the desire of the surety to be relieved from all liabilities thereon afterward arising, and the reasons therefor, which statement must be subscribed and verified by the affidavit of the party filing the same.

History.

I.C., § 59-824, as added by 1971, ch. 136,
§ 79, p. 522.

STATUTORY NOTES**Prior Laws.**

Former § 59-824 was repealed. See Prior Laws, § 59-801.

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, § 368.

59-825. Release of sureties — Service of statement. — A copy of the statement must be served on the officer named in such official bond and due return or affidavit of service made thereon as in other cases.

History.

I.C., § 59-825, as added by 1971, ch. 136, § 80, p. 522.

STATUTORY NOTES**Prior Laws.**

Former § 59-825 was repealed. See Prior Laws, § 59-801.

59-826. Release of sureties — Office declared vacant. — In twenty (20) days after the service of such notice the judge, court, board, officer, or other person with whom the same is filed, must make an order declaring such office vacant, and releasing such surety from all liability thereafter to arise on such official bond, and such office thereafter is in law vacant, and must be immediately filled by election or appointment, as provided for by law, as in other cases of vacancy of such office, unless such officer has, before that time, given good and ample surety for the discharge of all his official duties as required originally.

History.

I.C., § 59-826, as added by 1971, ch. 136, § 81, p. 522.

STATUTORY NOTES**Prior Laws.**

Former § 59-826 was repealed. See Prior Laws, § 59-801.

59-827. Release of sureties — Remaining sureties liable. — The release, discharge, voluntary withdrawal, or incompetency, of a surety on any official bond, does not affect the bond as to the remaining sureties thereon, or alter or change their liability in any respect.

History.

I.C., § 59-827, as added by 1971, ch. 136, § 82, p. 522.

STATUTORY NOTES

Prior Laws.

Former § 59-827 was repealed. See Prior Laws, § 59-801.

59-828. Release of sureties — Accrued liabilities unaffected. — No surety must be released from damages or liabilities for acts, omissions, or causes existing or which arose before the making of the order releasing him from liability, but such legal proceedings may be had therefor in all respects as though no such order had been made.

History.

I.C., § 59-828, as added by 1971, ch. 136, § 83, p. 522.

STATUTORY NOTES

Prior Laws.

Former § 59-828 was repealed. See Prior Laws, § 59-801.

59-829. Action on bonds — Lis pendens. — When an action is commenced in any court in this state for the benefit of the state, to enforce the penalty of, or to recover money upon, an official bond or obligation, or any bond or obligation executed in favor of the state of Idaho, or of the people of this state, the attorney or other person prosecuting the action may file with the court in which the action is commenced an affidavit, stating either positively or on information and belief that such bond or obligation was executed by the defendant or one or more of the defendants (designating whom), and made payable to the people of this state, or to the state of Idaho, and that the defendant or defendants have real estate or interest in lands (designating the county or counties in which the same is situated), and that the action is prosecuted for the benefit of the state; and thereupon the clerk receiving such affidavit must certify, to the recorder of the county in which such real estate is situated, the names of the parties to the action, the name of the court in which the action is pending and the amount claimed in the complaint, with the date of the commencement of the suit.

History.

I.C., § 59-829, as added by 1971, ch. 136, § 84, p. 522.

STATUTORY NOTES

Prior Laws.

Former § 59-829 was repealed. See Prior Laws, § 59-801.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 371 to 385.

59-830. Lis pendens — Filing and recording — Effect — Clerk's fees. — Upon receiving such certificate, the county recorder must indorse upon it the time of its reception, and such certificate must be filed and recorded in the same manner as notices of the pendency of an action affecting real estate; and any judgment recovered in such action is a lien upon all real estate belonging to the defendant or to one or more of the defendants, situated in any county in which such certificate is so filed, for the amount that the owner thereof is or may be liable upon the judgment, from the filing of the certificate; and the fees due the clerk and recorder for the services required are a charge against the county where the suit is brought, to be recovered like other costs.

History.

I.C., § 59-830, as added by 1971, ch. 136,
§ 85, p. 522.

STATUTORY NOTES

Prior Laws.

Former § 59-830 was repealed. See Prior
Laws, § 59-801.

59-831. Notification of expiration or failure to furnish official bond — Collection and deposit of unearned premiums. — In addition to the other duties prescribed by law, it shall be the duty of the secretary of state, in the case of official bonds of state officers or employees, and the county recorder in the case of official bonds of county officers or employees, to notify the governor or the board of county commissioners, as the case may be, at the expiration of any official bond or of the failure of any person to furnish the official bond required by law. It shall be the duty of such officers, within their respective jurisdictions, to collect any unearned premiums that may accrue for any reason and cause the same to be deposited in the state or county treasury, as the case may be, to the credit of the fund out of which the same was originally paid.

History.

I.C., § 59-831, as added by 1971, ch. 136,
§ 86, p. 522.

STATUTORY NOTES

Prior Laws.

Former § 59-831 was repealed. See Prior
Laws, § 59-801.

Effective Dates.

Section 87 of S.L. 1971, ch. 136 declared an
emergency. Approved March 18, 1971.

59-832 — 59-837. Bonds of receivers, trustees, executors, administrators and guardians — Actions — Failure to furnish — Bonds of deputies. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1867, p. 50, §§ 32 to 35; R.S., §§ 420 to 425; R.C. & C.L., §§ 312 to 316; C.S., §§ 448 to 452;

I.C.A., §§ 57-831 to 57-836; am. 1925, ch. 79, § 1, p. 113; am. 1939, ch. 158, § 1, p. 284; am. 1945, ch. 87, § 1, p. 134, were repealed by S.L. 1971, ch. 136, § 55, p. 522.

CHAPTER 9

RESIGNATIONS AND VACANCIES

SECTION.

- 59-901. How vacancies occur.
- 59-902. Resignations.
- 59-903. Notice of removal to appointing officer.
- 59-904. State offices — Vacancies, how filled and confirmed.
- 59-904A. Legislature — Vacancies, how filled.
- 59-905. Other state offices — County and city offices — Vacancies, how filled.
- 59-906. County offices — Vacancies.
- 59-906A. Board of county commissioners — Vacancies — How filled.
- 59-907. Prosecuting attorney — Vacancy — Residency — Contracting with another prosecuting attorney.
- 59-908. Residence of appointed commissioner.

SECTION.

- 59-909. Vacancies occurring immediately before election — How filled. [Repealed.]
- 59-910. United States senator — Vacancies, how filled.
- 59-911. Representative in congress — Vacancies, how filled.
- 59-912. Vacancies not otherwise provided for — How filled.
- 59-913. Appointments to be in writing.
- 59-914. Assumption of office — Tenure in office.
- 59-915. Vacancy in office — Possession pending qualification of successor.
- 59-916. Powers and duties of appointee.
- 59-917. Temporary inability of officers.

59-901. How vacancies occur. — (1) Every elective civil office shall be vacant upon the happening of any of the following events at any time before the expiration of the term of such office, as follows:

- (a) The resignation of the incumbent.
- (b) The death of the incumbent.
- (c) Removal of the incumbent from office by lawful procedure.
- (d) The decision of a competent tribunal declaring an elective office vacant due to apparent abandonment or prolonged incapacity or absence, or other basis as determined by the tribunal, provided such apparent abandonment, prolonged incapacity, absence or other basis is in excess of ninety (90) days.
- (e) The incumbent ceasing to be a resident of the state, district or county in which the duties of his office are to be exercised, or for which he may have been elected.
- (f) A failure to elect someone at the proper election, there being no incumbent to continue in office until a successor is elected and qualified, nor other lawful provisions for filling an elective office.
- (g) A forfeiture of elective office as provided by any law of the state.
- (h) Conviction of an incumbent officeholder of any felony, or of any public offense involving the violation of his oath of office.

(i) The acceptance of a commission to any military office, either in the militia of this state, or in the service of the United States, which requires the incumbent in the civil office to exercise his military duties out of the state for a period of not less than sixty (60) days.

History.

1890-1891, p. 57, § 169; reen. 1899, p. 67, § 1; am. R.C., § 317; reen. C.L., § 317; C.S.,

§ 453; I.C.A., § 57-901; am. 2012, ch. 209, § 1, p. 564.

STATUTORY NOTES

Cross References.

Failure of county officer who is granted leave of absence to appoint a deputy during his absence creates a vacancy in office, § 31-2005.

Recall elections, vacancies filled as in other cases, § 34-1712.

Usurpation of office, action for, § 6-602.

Amendments.

The 2012 amendment, by ch. 209, changed the designation scheme in the section and

explicitly made the section applicable to elective offices, added "by lawful procedure" at the end of paragraph (c), rewrote present paragraph (d) which formerly read, "The decision of a competent tribunal declaring his office vacant," substituted "any felony" for "any infamous crime" in paragraph (h), and made stylistic changes.

Compiler's Notes.

As amended in 2012, this section has a subsection (1), but no subsection (2).

JUDICIAL DECISIONS

ANALYSIS

Creation of deficiency.
Creation of new office.
Death before qualification.
Eligibility for election.

Creation of Deficiency.

The alleged fact that state insurance manager had created a deficiency exceeding his appropriation did not subject him to penalty of statute providing for disqualification from holding state office, where it had not been judicially determined that he created a deficiency. *O'Malley v. Parsons*, 59 Idaho 635, 85 P.2d 739 (1938).

Creation of New Office.

Newly created office, which is not filled by legislative act creating the same, and for which no provision is made by the act for filling the same, becomes vacant on the instant of its creation. *Knight v. Trigg*, 16 Idaho 256, 100 P. 1060 (1909).

Death Before Qualification.

Death of a person elected to office before he qualifies does not create a vacancy, as § 67-303 provides that every officer elected for a

fixed term shall hold office until a successor is elected and qualified. *Clark v. Wonnacott*, 30 Idaho 98, 162 P. 1074 (1917).

Eligibility for Election.

Under subsection 1 [now (1)(a)] of this section, a probate judge whose term of office expires January 1 and whose term as state representative; begins the previous December 1 may resign as probate judge in order to assume his office as state representative and, therefore, he is not rendered ineligible for election as state representative by the fact that he held the office of probate judge at the time of his election. *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967).

Cited in: *Bone v. Duclos*, 94 Idaho 589, 494 P.2d 1033 (1972); *Fitzpatrick v. Welch*, 96 Idaho 280, 527 P.2d 313 (1974); *City of Huetter v. Keene*, 150 Idaho 13, 244 P.3d 157 (2010).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 71, 73, 74, 153 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 31, 32, 100 to 103.

A.L.R. — Removal of public officer for misconduct during previous term. 42 A.L.R.3d 691.

Pardon as restoring public office or license or eligibility therefor. 58 A.L.R.3d 1191.

Validity, construction, and effect of state constitutional or statutory provision regarding nepotism in the public service. 11 A.L.R.4th 826.

Allowance of attorneys' fees in mandamus proceedings. 34 A.L.R.4th 457.

What constitutes conviction within statutory or constitutional provision making conviction of crime ground of disqualification for, removal from, or vacancy in, public office. 10 A.L.R.5th 139.

59-902. Resignations. — Resignations of civil offices must be in writing, and may be made as follows:

1. By the governor, or the lieutenant governor, to the legislature, if in session; if not, to the secretary of state.

2. By senators and representatives in congress, and by all other state officers elected statewide by the qualified voters of the state, and by judges of the supreme court and district courts, and regents of the university, to the governor.

3. By members of the senate and house of representatives, to the presiding officers of their respective bodies, in session, who shall immediately transmit information of the same to the governor. If such bodies are not in session, to the governor.

4. By all county officers, to the county board, and by members of the county board, to the county auditor.

5. By all officers holding appointment, to the officer or body by whom they were appointed.

Such resignation shall not take effect until accepted by the board or officer to whom the same is made.

History.

1890-1891, p. 57, § 170; reen. 1899, p. 67, § 2; compiled and reen. R.C., § 318; reen.

C.L., § 318; C.S., § 454; I.C.A., § 57-902; am. 1975, ch. 21, § 4, p. 30; am. 1977, ch. 105, § 1, p. 222.

STATUTORY NOTES

Cross References.

Resignation of recalled officer, § 34-1707.

JUDICIAL DECISIONS

Eligibility for Election.

A probate judge is a county officer and, under subsection 4 of this section, a probate judge whose term of office expires January 1 and whose term as state representative begins the previous December 1 may resign as probate judge in order to assume his office as state representative; therefore, he is not ren-

dered ineligible for election as state representative by the fact that he held the office of probate judge at the time of his election. *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967).

Cited in: *Fitzpatrick v. Welch*, 96 Idaho 280, 527 P.2d 313 (1974).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, § 154.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 135 to 138.

59-903. Notice of removal to appointing officer. — Whenever an

officer is removed, convicted of any infamous crime or offense involving a violation of his oath of office, or whenever his election or appointment is declared void, the body, judge, or officer before whom the proceedings were had, must give notice thereof to the officer empowered to fill the vacancy.

History.

R.S., § 432; compiled and reen. R.C., § 319; reen. C.L., § 319; C.S., § 455; I.C.A., § 57-903.

STATUTORY NOTES

Cross References.

Vacation of civil office on conviction of an infamous crime or any public offense involving violation of oath of office, § 59-901.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 148 et seq.

59-904. State offices — Vacancies, how filled and confirmed. —

(a) All vacancies in any state office, and in the supreme and district courts, unless otherwise provided for by law, shall be filled by appointment by the governor. Appointments to fill vacancies pursuant to this section shall be made as provided in subsections (b), (c), (d), (e) and (f) of this section, subject to the limitations prescribed in those subsections.

(b) Nominations and appointments to fill vacancies occurring in the office of lieutenant governor, state controller, state treasurer, superintendent of public instruction, attorney general and secretary of state shall be made by the governor, subject to the advice and consent of the senate, for the balance of the term of office to which the predecessor of the person appointed was elected.

(c) Nominations and appointments to and vacancies in the following listed offices shall be made or filled by the governor subject to the advice and consent of the senate for the terms prescribed by law, or in case such terms are not prescribed by law, then to serve at the pleasure of the governor:

- Director of the department of administration,
- Director of the department of finance,
- Director of the department of insurance,
- Director, department of agriculture,
- Director of the department of water resources,
- Director of the Idaho state police,
- Director of the department of commerce,
- Director of the department of labor,
- Director of the department of environmental quality,
- Director of the department of juvenile corrections,
- Executive director of the commission of pardons and parole,
- The state historic preservation officer,
- The administrator of the division of human resources,
- Member of the state tax commission,
- Members of the board of regents of the university of Idaho and the state board of education,

Members of the Idaho water resources [resource] board,
Members of the state fish and game commission,
Members of the Idaho transportation board,
Voting members of the state board of health and welfare,
Members of the board of environmental quality,
Members of the board of directors of state parks and recreation,
Members of the board of correction,
Members of the industrial commission,
Members of the Idaho public utilities commission,
Members of the Idaho personnel commission,
Members of the board of directors of the Idaho state retirement system,
Members of the board of directors of the state insurance fund,
Members of the commission of pardons and parole.

(d) Appointments made by the state board of land commissioners to the office of director, department of lands, and appointments to fill vacancies occurring in those offices shall be submitted by the president of the state board of land commissioners to the senate for the advice and consent of the senate in accordance with the procedure prescribed in this section.

(e) Appointments made pursuant to this section while the senate is in session shall be submitted along with the letter of appointment to the senate forthwith for the advice and consent of that body. Appointments made pursuant to this section while the senate is not in session shall be submitted along with the letter of appointment to the senate pursuant to section 67-803, Idaho Code. Should the senate adjourn without granting its consent to an appointment the appointment shall thereupon become void and a vacancy in the office to which the appointment was made shall exist, and the office shall be deemed vacant upon the date of adjournment. It is the duty of the appointing authority to supply the senate with the letter of appointment. The appointee shall supply the senate with the documentation it requests.

All appointments made pursuant to subsection (c) of this section, except those appointments for which a term of office is fixed by law, shall terminate at the expiration of any gubernatorial term. Appointments to fill the vacancies thus created by the expiration of the term of office of the governor shall be forthwith submitted to the senate for the advice and consent of that body, and when so submitted shall be as expeditiously considered as possible.

Upon receipt of an appointment along with the letter of appointment in the senate for the purpose of securing the advice and consent of the senate, the appointment shall be referred by the presiding officer to the appropriate committee of the senate for consideration and report prior to action thereon by the full senate.

(f) It is the intent of the legislature that the provisions of this section as amended by this chapter shall not apply to appointments which have been made prior to the effective date of this chapter. It is the further intent of the legislature that the provisions of this section shall apply to the offices listed in this section and to any office created by law or executive order which succeeds to the powers, duties, responsibilities and authorities of any of the offices listed in subsections (c) and (d) of this section.

History.

1890-1891, p. 57, § 12; reen. 1899, p. 67, § 3; compiled and reen. R.C., § 320; reen. C.L., § 320; C.S., § 456; I.C.A., § 57-904; am. 1969, ch. 413, § 1, p. 1145; am. 1974, ch. 22, § 57, p. 592; am. 1977, ch. 105, § 2, p. 222; am. 1985, ch. 160, § 1, p. 426; am. 1994, ch. 180, § 133, p. 420; am. 1995, ch. 44, § 62, p.

65; am. 1996, ch. 232, § 1, p. 758; am. 1996, ch. 421, § 3, p. 1406; am. 1998, ch. 428, § 9, p. 1346; am. 1999, ch. 311, § 2, p. 772; am. 1999, ch. 370, § 17, p. 976; am. 2000, ch. 132, § 3, p. 309; am. 2000, ch. 469, § 129, p. 1450; am. 2004, ch. 346, § 8, p. 1029; am. 2007, ch. 360, § 20, p. 1061; am. 2010, ch. 335, § 1, p. 887.

STATUTORY NOTES**Cross References.**

Board of landscape architects, vacancies to be filled by governor, § 54-3003.

Board of tax appeals, vacancies to be filled by governor with confirmation of senate, § 63-3803.

Code commission, vacancies other than by expiration of term to be filled by remaining members, § 73-203.

District judge, vacancy in office of, §§ 1-702, 1-905, Idaho Const., Art. IV, § 6.

Electrical board, vacancies to be filled by governor, § 54-1006.

Office of justice of supreme court or district court, secretary of state, state auditor, state treasurer, attorney general or superintendent of schools, vacancy to be filled by governor, Idaho Const., Art. IV, § 6.

Presidential electors, vacancy to be filled by remaining electors, §§ 34-1504, 34-1505.

Public utilities commission, vacancies to be filled by governor with confirmation of senate, § 61-201.

Recall elections, vacancies filled as in other cases, § 34-1712.

Vacancy in state tax commission during recess of senate, Idaho Const., Art. VII, § 12.

Amendments.

This section was amended by two 1996 acts which appear to be compatible and have been compiled together.

The 1996 amendment, by ch. 232, § 1, in subsection (c) added "The state historic preservation officer," to the list of offices.

The 1996 amendment, by ch. 421, § 3, in subsection (c), in the list of offices, substituted "Director of the department of labor" for "Director of the department of employment" and deleted "Director, department of labor and industrial services," following "Director of the department of law enforcement".

This section was amended by two 1999 acts which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 311, § 2, inserted "Executive director of the commission of pardons and parole," and "Members of the commission of pardons and parole" to the listing of offices in subsection (c).

The 1999 amendment, by ch. 370, § 17, added "the administrator of the division of human resources" to the listing of offices in

subsection (c) and changed "this act" to "this chapter" in two places in subsection (f).

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 132, § 3, in subsection (c), inserted "Director of the department of environmental quality" and "Members of the board of environmental quality".

The 2000 amendment, by ch. 469, § 129, in subsection (c), substituted "Idaho state police" for "department of law enforcement".

The 2007 amendment, by ch. 360, in subsection (c), deleted "and labor" following "department of commerce," and added "Director of the department of labor."

The 2010 amendment, by ch. 335, in subsection (c), substituted "Voting members of the state board" for "Members of the state board"; in subsection (e), in the first sentence, inserted "along with the letter of appointment," deleted the second former second sentence, which read: "The appointment so made and submitted shall not be effective until the approval of the senate has been recorded in the journal of the senate," rewrote the former third sentence, which read: "Appointments made pursuant to this section while the senate is not in session shall be effective until the appointment has been submitted to the senate for the advice and consent of the senate," in the present third sentence, substituted "an appointment" for "such an interim appointment," and added "and the office shall be deemed vacant upon the date of adjournment," and added the last two sentences; and in the third paragraph in subsection (e), inserted "along with a letter of appointment."

Compiler's Notes.

The bracketed insertion in the list in subsection (c) was added by the compiler to correct the name of the referenced agency.

The phrase "the effective date of this chapter" in subsection (f) originally appeared as "the effective date of this act" and referred to the effective date of S.L. 1969, ch. 413, which was effective April 7, 1969.

Effective Dates.

Section 2 of S.L. 1969, ch. 413 declared an emergency. Approved April 7, 1969.

Section 61 of S.L. 1974, ch. 22 provided that the act should take effect on and after July 1, 1974.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 133 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 64 of S.L. 1995, ch. 44 declared an emergency and provided that §§ 4 and 58 to 62 should be in full force and effect on and after passage and approval; approved March 6, 1995; section 65 provided that all remaining sections of the act should be in full force and effect on and after October 1, 1995.

Section 4 of S.L. 1996, ch. 232 declared an emergency. Approved March 14, 1996.

Section 11 of S.L. 1998, ch. 428 declared an emergency. Approved April 3, 1998.

Section 6, of S.L. 1999, ch. 311 declared an emergency. Approved March 24, 1999.

Section 39 of S.L. 2000, ch. 132 provided: "(1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

"(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality."

Section 2 of S.L. 2010, ch. 335 declared an emergency. Approved April 12, 2010.

JUDICIAL DECISIONS

ANALYSIS

Application.

Subsequent appointee.

Application.

Person appointed by governor to fill vacancy of state treasurer as result of death of elected official holds office for balance of term of elected official. *Moon v. Masters*, 73 Idaho 146, 247 P.2d 158 (1952).

Subsequent Appointee.

Where first appointee of governor resigned his office before the next general election, and

governor made another and further appointment, such subsequent appointee takes office subject to same provisions as the original appointee. *Joy v. Gifford*, 22 Idaho 301, 125 P. 181 (1912).

Cited in: *Knight v. Trigg*, 16 Idaho 256, 100 P. 1060 (1909); *Budge v. Gifford*, 26 Idaho 521, 144 P. 333 (1914).

RESEARCH REFERENCES

Am. Jur. — 63C Am. Jur. 2d, Public Officers and Employees, § 108.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 104 to 109.

59-904A. Legislature — Vacancies, how filled. — In the event of a vacancy in the house of representatives or senate of the state of Idaho, such vacancy shall be filled as herein provided. The legislative district committee of the same political party, if any, of the former member whose seat is vacant shall submit, within fifteen (15) days, a list of three (3) nominations to the governor. The governor shall fill the vacancy by appointment from the list of three (3) nominations within fifteen (15) days. If no appointment has been made within fifteen (15) days, the legislative district committee shall designate one (1) of the three (3) nominees to fill the vacancy. The vacancy shall be so filled until the next general election after such vacancy occurs, when such vacancy shall be filled by election.

The legislative district committee of the same political party, if any, of the former member, shall select a person who possesses the constitutional qualifications to fill the vacant office to which he is nominated, and who is affiliated with the same political party, if any, as the former member whose seat is vacant. Upon the failure of the committee to make such selection before the expiration of the fifteen (15) day period the governor shall within five (5) days, fill said vacancy by appointing a person having the qualifications above set forth.

History.

I.C., § 59-904A, as added by 1971, ch. 128,
§ 1, p. 509.

STATUTORY NOTES

Cross References.

Emergency Interim Legislative Succession Act, designation of emergency interim successors to legislators by each legislator, §§ 67-413 to 67-426.

Legislative council vacancies to be filled by remaining members, § 67-427.

Recall elections, vacancies filled as in other cases, § 34-1712.

Effective Dates.

Section 2 of S.L. 1971, ch. 128 declared an emergency. Approved March 16, 1971.

59-905. Other state offices — County and city offices — Vacancies, how filled. — Vacancies shall be filled in the following manner: In the office of the clerk of the Supreme Court, by the Supreme Court. In all other state offices, and in the membership of any board or commission created by the state, where no other method is specifically provided, by the governor. In county offices, by the procedure prescribed in section 59-906, Idaho Code, and in the membership of such board, by the governor. In city offices, by the mayor and council. *

History.

1890-1891, p. 57, § 171; reen. 1899, p. 67,
§ 4; compiled and reen. R.C., § 321; reen.

C.L., § 321; C.S., § 457; I.C.A., § 57-905; am.
1975, ch. 21, § 5, p. 30; am. 1982, ch. 4, § 1, p.
7.

STATUTORY NOTES

Cross References.

Mayor, vacancy to be filled by city council,
§ 50-608.

Recall elections, vacancies filled as in other cases, § 34-1712.

JUDICIAL DECISIONS

Cited in: Jordan v. Pearce, 91 Idaho 687,
429 P.2d 419 (1967).

59-906. County offices — Vacancies. — (1) Except as provided in subsection (2) of this section, all vacancies in any county office of any of the several counties of the state, except that of the county commissioners (who shall be appointed by the governor), shall be filled by appointment by the county commissioners of the county in which the vacancy occurs in accor-

dance with the procedure prescribed below until the next general election, when such vacancy shall be filled by election.

The vacancy shall be filled as follows: the county central committee of the same political party, if any, of the former officer, whose office is vacant, shall submit a list of three (3) nominations to the board of county commissioners within fifteen (15) days from the day the office is vacated. The board of county commissioners shall fill the vacancy by appointment from the submitted list within fifteen (15) days. Should no appointment be made within fifteen (15) days, the county central committee of the political party submitting the nominations shall designate one (1) of the three (3) nominees to fill the vacancy. The person selected shall be a person who possesses the same qualifications at the time of his appointment as those provided by law for election to the office. Upon failure of the committee to make a selection before the expiration of the additional fifteen (15) day period, the board of county commissioners shall, within five (5) days, fill the vacancy by appointing a person having the same qualifications at the time of his appointment as those provided by law for election to the office. If the person who has vacated the office has not been affiliated with a political party, the vacancy shall be filled by the board of county commissioners by appointment of a person having the same qualifications at the time of his appointment as those provided by law for election to the office.

(2) When a county elected officer, except a county commissioner, gives a written notice of intent to resign to the board of commissioners of the county of which he is an elected officer, and when the notice of intent to resign specifies the effective date of the resignation, the county central committee of the same political party of the officer whose office is being vacated, may submit a list of three (3) nominations to the board of county commissioners prior to the effective date of the resignation. The board of county commissioners shall fill the vacancy by appointment from the submitted list to be effective on the day following the date the office is vacated by the former officer. The person selected shall be a person who possesses the same qualifications at the time of his appointment as those provided by law for election to the office. In the event the county elected officer rescinds his notice of intent to resign by notifying the board of county commissioners in writing prior to the effective date of his resignation, all actions taken by either the county central committee or the board of county commissioners to fill the anticipated vacancy, shall be null and void. If no appointment is made prior to the day the office is vacated, the provisions of subsection (1) of this section shall apply.

History.

1899, p. 67, § 9; reen. R.S. & C.L., § 322; C.S., § 458; I.C.A., § 57-906; am. 1975, ch.

21, § 6, p. 30; am. 1982, ch. 4, § 2, p. 7; am. 1984, ch. 192, § 1, p. 441; am. 1991, ch. 81, § 1, p. 182.

STATUTORY NOTES**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

ANALYSIS

Construction.

Term of appointee.

Construction.

When considered in *pari materia*, this section and §§ 59-913 and 59-914 show a legislative intent to provide for filling vacancies in offices of both two year and four year tenures; however, the statutory provisions for filling vacancies by election are applicable only to vacancies in offices having the longer tenure. *White v. Young*, 88 Idaho 188, 397 P.2d 756 (1964).

Term of Appointee.

Under the statutory provisions, the appointee to a vacancy in a county office holds that office until the next November general elec-

tion, even though it is also provided by statute that the clerk of the district court is to be elected every fourth year. *Winter v. Davis*, 65 Idaho 696, 152 P.2d 249 (1944).

An appointee filling a vacancy in the office of county commissioner will serve until the next general election like other county appointees holding office under the provisions of this section. *Bone v. Duclos*, 94 Idaho 589, 494 P.2d 1033 (1972).

Cited in: *Moon v. Masters*, 73 Idaho 146, 247 P.2d 158 (1952); *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967); *Bone v. Andrus*, 96 Idaho 291, 527 P.2d 783 (1974).

OPINIONS OF ATTORNEY GENERAL

Since county prosecuting attorneys are "county officers" under Idaho Const., Art. V, § 18, it is the duty of the board of county commissioners, pursuant to this section, to fill a vacancy in the office of county prosecuting attorney by appointing a person with the same qualifications necessary for election to that office. OAG 87-10.

When the board of county commissioners is unable to find an election-qualified replacement to fill a vacancy in the office of county prosecuting attorney, pursuant to this section, the district court, pursuant to § 31-2603, may appoint some suitable person as special prosecutor to perform prosecutorial duties for the time being. OAG 87-10.

59-906A. Board of county commissioners — Vacancies — How filled. — In the event of a vacancy on a board of county commissioners, such vacancy shall be filled as herein provided. The county central committee of the same political party, if any, of the former member whose seat is vacant shall submit, within fifteen (15) days, a list of three (3) nominations to the governor. The governor shall fill the vacancy by appointment from the list of three (3) nominations within fifteen (15) days. If no appointment has been made within fifteen (15) days, the county central committee shall designate one (1) of the three (3) nominees to fill the vacancy. The vacancy shall be so filled until the expiration of the term in which the vacancy occurs. The county central committee of the same political party, if any, of the former member, shall select a person who possesses the constitutional qualifications to fill the vacant office to which he is nominated, and who is affiliated with the same political party, if any, as the former member whose seat is vacant. Upon failure of the committee to make such selection before the expiration of the fifteen (15) day period, the governor shall within five (5) days, fill said vacancy by appointing a person having the qualifications above set forth.

History.

I.C., § 59-906A, as added by 1974, ch. 78, § 1, p. 1165.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1974, ch. 78 declared an emergency. Approved March 21, 1974.

59-907. Prosecuting attorney — Vacancy — Residency — Contracting with another prosecuting attorney. — (1) In the event a vacancy exists and there are three (3) or fewer resident attorneys in the county who are willing and qualified to perform the functions of prosecuting attorney as set forth in chapter 26, title 31, Idaho Code, the board of county commissioners may appoint and/or contract with an attorney from outside the county to perform the duties of prosecuting attorney for the balance of the unexpired term or such shorter period as the board of county commissioners shall determine.

(2) A county may contract for prosecutorial services with another prosecuting attorney provided that:

- (a) The circumstances of subsection (1) of this section have occurred;
- (b) The boards of county commissioners of both affected counties adopt resolutions so authorizing the prosecutor to fill the vacancy or appointment and/or contract; and
- (c) The length of the term of appointment or contract complies with subsection (1) of this section.

(3) Subsection (2) of this section shall operate as a limited exception to that portion of section 31-2601, Idaho Code, that prohibits a prosecuting attorney from holding any other county office.

History.

I.C., § 59-907, as added by 1988, ch. 295, § 2, p. 935; am. 1996, ch. 158, § 1, p. 501; am. 2006, ch. 115, § 1, p. 314.

STATUTORY NOTES

Prior Laws.

Former § 59-907, which comprised R.S., § 1765; reen. R.C. & C.L., § 322a; C.S., § 459; I.C.A., § 57-907, was repealed by S.L. 1975, ch. 21, § 7.

“Contracting with another prosecuting attorney” to the end of the section heading; added the subsection (1) designation; and added subsections (2) and (3).

Amendments.

The 2006 amendment, by ch. 115, added

59-908. Residence of appointed commissioner. — Whenever the governor appoints a county commissioner to fill a vacancy in any county, he shall appoint a person who is a resident of the commissioner district of the county in which the vacancy exists.

History.

1899, p. 67, § 10; reen. R.C. & C.L., § 323; C.S., § 460; I.C.A., § 57-908.

STATUTORY NOTES

Cross References.

Commissioner must be resident of district he represents, § 31-702.

JUDICIAL DECISIONS

Cited in: *Strecker v. Smith*, 66 Idaho 593, 164 P.2d 192 (1945).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S. Offices and Public Employees, § 21.

59-909. Vacancies occurring immediately before election — How filled. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1890-1891, p. 57, § 175; reen. 1899, p. 67, § 8; reen. R.C.

& C.L., § 324; C.S., § 461; I.C.A., § 57-909; am. 1969, ch. 128, § 1, p. 394, was repealed by S.L. 1977, ch. 105, § 3.

59-910. United States senator — Vacancies, how filled. — Whenever any vacancy shall occur in the office of United States senator from the state of Idaho by death, resignation or otherwise, the governor shall have the power and is hereby authorized and empowered to fill such vacancy by appointment, and the person so appointed shall hold such office until such time as a United States senator is regularly elected to fill such vacancy, at the next succeeding general election, and qualifies by virtue of such election: provided, however, that in case a vacancy occurs in the position of United States senator from the state of Idaho within thirty (30) days of any general election, no election for United States senator to fill said vacancy shall be held at such general election.

History.

1917, ch. 27, § 1, p. 68; reen. C.L., § 325a; C.S., § 463; I.C.A., § 57-910.

59-911. Representative in congress — Vacancies, how filled. — Whenever any vacancy shall occur in the office of representative in congress from the state, it shall be the duty of the governor to appoint a day to hold an election, subject to the provisions of section 34-106, Idaho Code, to fill such vacancy, and cause notice of such election to be given as required in section 34-1406, Idaho Code.

History.

1890-1891, p. 57, § 176; reen. 1899, p. 67, § 11; reen. R.C. & C.L., § 326; C.S., § 464;

I.C.A., § 57-911; am. 1995, ch. 118, § 88, p. 417.

59-912. Vacancies not otherwise provided for — How filled. — When any office becomes vacant, and no mode is provided by law for filling such vacancy, the governor must fill such vacancy by appointment.

History. § 327; C.S., § 465; I.C.A., § 57-912; am. R.S., § 434; am. R.C., § 327; reen. C.L., 1977, ch. 105, § 4, p. 222.

59-913. Appointments to be in writing. — Appointments under the provisions of this chapter shall be in writing, and continue until a successor is selected and qualified, and be filed with the secretary of state, or proper county auditor, respectively.

History. I.C.A., § 57-913; am. 1977, ch. 105, § 5, p. 1890-1891, p. 57, § 173; reen. 1899, p. 67, 222.
§ 6; reen. R.C. & C.L., § 328; C.S., § 466;

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

JUDICIAL DECISIONS

Construction.

When considered in pari materia, § 59-906, this section and § 59-915 show a legislative intent to provide for filling vacancies in offices of both two year and four year tenures; however, the statutory provisions for filling vacancies by election are applicable only to

vacancies in offices having the longer tenure. White v. Young, 88 Idaho 188, 397 P.2d 756 (1964).

Cited in: Moon v. Masters, 73 Idaho 146, 247 P.2d 158 (1952); Bone v. Duclos, 94 Idaho 589, 494 P.2d 1033 (1972).

59-914. Assumption of office — Tenure in office. — Any of the said officers that may be elected to fill vacancies may qualify and enter upon the discharge of the duties of their offices immediately thereafter; and, they may hold the same during the unexpired term for which they were elected.

Any of the said officers that may be appointed to fill vacancies may qualify and enter upon the discharge of the duties of their offices subject to the provisions of section 59-904, Idaho Code, for the term designated in the order of appointment.

History. § 329; reen. C.L., § 329; C.S., § 467; I.C.A., 1899, p. 67, § 13; compiled and reen. R.C., § 57-914; am. 1977, ch. 105, § 6, p. 222.

JUDICIAL DECISIONS

ANALYSIS

Application.

Construction.

Tenure.

Term of appointee.

Application.

Provisions of this section do not apply to filling of vacancy in office of state treasurer,

since filling of vacancy in that office is expressly provided for in Idaho Const., Art. IV, § 6. Moon v. Masters, 73 Idaho 146, 247 P.2d

158 (1952).

Construction.

When considered in *pari materia*, § 59-906, § 59-913 and this section show a legislative intent to provide for filling vacancies in offices of both two year and four year tenures; however, the statutory provisions for filling vacancies by election are applicable only to vacancies in offices having the longer tenure. *White v. Young*, 88 Idaho 188, 397 P.2d 756 (1964).

Tenure.

It is clear that the legislature recognized the democratic principle which requires that elective offices be filled by incumbents chosen by the electors, and it is the general policy of

the law that vacancies in elective offices should be filled at an election as quickly as practicable after the vacancy occurs. *Winter v. Davis*, 65 Idaho 696, 152 P.2d 249 (1944).

Term of Appointee.

The appointee to a vacancy in a county office holds that office until the next November general election. *Winter v. Davis*, 65 Idaho 696, 152 P.2d 249 (1944).

Person appointed by governor to fill vacancy of state treasurer as result of death of elected official holds office for balance of term of elected official. *Moon v. Masters*, 73 Idaho 146, 247 P.2d 158 (1952).

Cited in: *Bone v. Duclos*, 94 Idaho 589, 494 P.2d 1033 (1972).

59-915. Vacancy in office — Possession pending qualification of successor. — When a vacancy occurs in a public office, the office and duties shall be assumed until the election or appointment and qualification of a successor as follows:

(1) Of the office of the county clerk, auditor and recorder or treasurer, by the senior deputy as designated in section 31-2006, Idaho Code. If no deputy is available, then the board of county commissioners shall assume the office until the election or appointment of a successor.

(2) Of any state executive officer, by the chief deputy, under the supervision of the governor.

History.

I.C., § 59-915, as added by 1991, ch. 68, § 2, p. 164.

STATUTORY NOTES

Prior Laws.

Former § 59-915, which comprised, 1890-1891, p. 57, § 174, reen. 1899, p. 67, § 7;

compiled and reen. R.C., § 330; reen. C.L., § 330; C.S., § 468; I.C.A., § 57-915, was repealed by § 1 of S.L. 1991, ch. 68.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 110 to 118.

59-916. Powers and duties of appointee. — Any person elected or appointed to fill a vacancy, after filing his official oath and qualifying for the state official bond, as prescribed by chapter 8, title 59, Idaho Code, possesses all the rights and powers, and is subject to all the liabilities, duties and obligations, of the officer whose vacancy he fills.

History.

R.S., § 436; reen. R.C. & C.L., § 331; C.S.,

§ 469; I.C.A., § 57-916; am. 1971, ch. 136, § 37, p. 522.

JUDICIAL DECISIONS

Cited in: Bone v. Duclos, 94 Idaho 589, 494 P.2d 1033 (1972).

59-917. Temporary inability of officers. — Whenever for any reason any elective official of the state, is temporarily unable to perform the duties of his office, the governor may appoint a suitable person to perform such duties temporarily as an acting officer, until the incumbent of the office shall be able to resume the performance of his duties, or a vacancy occurs in such office. The governor shall require such bonds for persons so appointed as may appear to him necessary for the protection of the state, not exceeding the bonds given by the officer in whose stead he acts. Such acting officer shall be nominated by the incumbent of the office: provided, that when the incumbent is unable or fails to so nominate, the governor may appoint without such nomination: provided further, that nothing in this section contained shall be construed to amend or repeal existing laws relating to filling vacancies in state offices. In any case involving an office, the appointment to which, at the time involved would, in case of vacancy, require the consent of the senate, the consent of the senate shall be requisite to the temporary service of the acting officer.

History.

1890-1891, p. 39, §§ 1, 2; reen. 1899, p. 21, §§ 1, 2; am. R.C., § 332; reen. C.L., § 332;

C.S., § 470; I.C.A., § 57-917; am. 1945, ch. 164, § 4, p. 245.

STATUTORY NOTES

Effective Dates.

Section 7 of S.L. 1945, ch. 164 declared an emergency. Approved March 16, 1945.

CHAPTER 10

MISCELLANEOUS PROVISIONS

SECTION.

- 59-1001. Possession of books and papers.
- 59-1002. Proceedings to compel delivery of books and papers.
- 59-1003. Attachment to enforce delivery of books and papers.
- 59-1004. Seals of executive officers.
- 59-1005. Great seal of state.
- 59-1005A. Authorship and description of great seal of state.
- 59-1006. Officers may administer oaths.
- 59-1007. Office hours.
- 59-1008. Signature of ex officio officers.
- 59-1009. Official records open to inspection. [Repealed.]
- 59-1010. Officers to keep accounts.
- 59-1011. Furnishing account books — Examination by citizens.
- 59-1012. Sale of pamphlet laws — Disposition of funds — Exception.

SECTION.

- 59-1013. Sale of pamphlet laws — Penalty for nonfeasance.
- 59-1014. Accounting for fees.
- 59-1014A. Accounting for losses.
- 59-1015. Deficiencies — Creation prohibited — Exception.
- 59-1016. Deficiencies — Contracts in creation of, void.
- 59-1017. Deficiencies — Penalty for creating.
- 59-1018. Uniform facsimile signature of public officials act — Definitions.
- 59-1019. Facsimile signature.
- 59-1020. Use of facsimile seal.
- 59-1021. Violation and penalty.
- 59-1022. Uniformity of interpretation.
- 59-1023. Short title.
- 59-1024. Open meetings. [Repealed.]
- 59-1025. Eligibility of blind persons under merit systems.

SECTION.

59-1026. Willful and knowing avoidance of competitive bidding and pro-

curement statutes — Civil penalties.

59-1001. Possession of books and papers. — Every public officer is entitled to the possession of all books and papers pertaining to his office, or in the custody of a former incumbent by virtue of his office.

History.

R.S., § 440; reen. R.C. & C.L., § 333; C.S., § 471; I.C.A., § 57-1001.

STATUTORY NOTES

Cross References.

Penalty for withholding books and records from successor, § 18-2710.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 118.

59-1002. Proceedings to compel delivery of books and papers. — If any person, whether a former incumbent or another person, refuse or neglect to deliver to the actual incumbent any such books or papers, such actual incumbent may apply by petition to any court of record sitting in the county where the person so refusing or neglecting resides, or to any judge of the district court residing therein, and the court or officer applied to must proceed in a summary way, after notice to the adverse party, to hear the allegation and proofs of the parties, and to order any such books or papers to be delivered to the petitioner.

History.

R.S., § 441; am. R.C., § 334; reen. C.L., § 334; C.S., § 472; I.C.A., § 57-1002.

STATUTORY NOTES

Compiler's Notes.

"District court" has been substituted for "district and probate court" on the authority

of § 1-103 which provided that probate court shall mean district or magistrate's division of the district court.

JUDICIAL DECISIONS

Application.

This section affords a remedy to an actual incumbent of an office for the purpose of obtaining the records of the office; it is not

designed nor intended for the purpose of trying title to the office. *White v. Young*, 88 Idaho 188, 397 P.2d 756 (1964).

RESEARCH REFERENCES

C.J.S. — 76 C.J.S., Records, § 36.

59-1003. Attachment to enforce delivery of books and papers. —

The execution of the order and the delivery of the books and papers may be enforced by attachment as for a witness, and also, at the request of the petitioner, by a warrant directed to the sheriff or a constable of the county, commanding him to search for such books and papers, and to take and deliver them to the petitioner.

History.

R.S., § 442; reen. R.C. & C.L., § 335; C.S., § 473; I.C.A., § 57-1003.

STATUTORY NOTES**Cross References.**

Attachment for witness, §§ 9-709, 9-710.

59-1004. Seals of executive officers. — Except when otherwise specially provided by law, the seals of office of the various executive officers are those in use by such officers at the time this title takes effect, and each of such officers must at once file a description and impression of such seal in the office of the secretary of state.

History.

R.S., § 448; am. R.C., § 336; reen. C.L., § 336; C.S., § 474; I.C.A., § 57-1004.

STATUTORY NOTES**Cross References.**

Secretary of state, § 67-901 et seq.

59-1005. Great seal of state. — The design drawn and executed by Miss Emma Edwards, of Boise City, and reported and recommended by the select joint committee to devise a great seal for the state, with the Latin motto "Esto Perpetua," is adopted, and is hereby made the great seal of the state of Idaho. The painting shall serve as the model as to color and form for the center of the seal. The five-pointed star in the painting shall be within a border encircling the painting. Within the border shall be the words: Great Seal of the state of Idaho. The secretary of state, with the approval of the state board of examiners, shall have designed the appropriate encircling border and wording as herein set forth and shall have the same superimposed on a fully colored reproduction of the painting. This, when completed, shall be designated as the "Official Copy" of the great seal of the state of Idaho and shall be maintained in the office of the secretary of state.

History.

1890-1891, p. 215, § 1; reen. 1899, p. 147, § 1; am. R.C., § 337; reen. C.L., § 475; I.C.A., § 57-1005; am. 1957, ch. 238, § 1, p. 568.

STATUTORY NOTES**Cross References.**

Grants and permissions to bear seal, Idaho Const., Art. IV, § 16.

Great seal to be attached to commissions of officers, § 59-304.

Secretary of state, § 67-901 et seq.

Secretary of state to keep and use seal, Idaho Const., Art. IV, § 15.

State board of examiners, § 67-2001 et seq.

sum of \$1,000 or so much thereof as may be necessary, is hereby appropriated from the general fund of the state of Idaho to the secretary of state for this purpose."

Compiler's Notes.

Section 2 of S.L. 1957, ch. 238 read: "The

59-1005A. Authorship and description of great seal of state. —

The inscription of authorship of the great seal of state shall appear as follows: 1891 EMMA EDWARDS GREEN — PAUL B. EVANS rev. 1957. The new inscription shall be located in the same place and manner as the previous inscription, using more space as is necessary. In gratitude for and as a tribute to Emma Edwards Green for her design of the Idaho state seal is her description of the seal in her own words:

"Before designing the seal, I was careful to make a thorough study of the resources and future possibilities of the state. I invited the advice and counsel of every member of the legislature and other citizens qualified to help in creating a seal of state that really represented Idaho at that time. Idaho had been admitted into the Union on July 3rd, 1890, and on March 14, 1891, adopted my design for the great seal of the state of Idaho.

The question of woman suffrage was being agitated somewhat, and as leading men and politicians agreed that Idaho would eventually give women the right to vote, and as mining was the chief industry, and the mining man the largest financial factor at that time, I made the figure of the man the most prominent in the design, while that of the woman, signifying justice, as noted by the scales; liberty, as noted by the liberty cap on the end of the spear, and equality with man as denoted by her positions at his side, also signifies freedom. The pick and shovel held by the miner, and the ledge of rock beside which he stands, as well as the pieces of ore scattered about his feet, all indicate the chief occupation of the state. The stamp mill in the distance, which you can see by using a magnifying glass, is also typical of the mining interest of Idaho. The shield between the man and woman is emblematic of the protection they unite in giving the state. The large fir or pine tree in the foreground in the shield refers to Idaho's immense timber interests. The husbandman plowing on the left side of the shield, together with the sheaf of grain beneath the shield, are emblematic of Idaho's agricultural resources, while the cornucopias, or horns of plenty, refer to the horticultural. Idaho has a game law, which protects the elk and moose. The elk's head, therefore, rises above the shield. The state flower, the wild Syringa or Mock Orange, grows at the woman's feet, while the ripened wheat grows as high as her shoulder. The star signifies a new light in the galaxy of states. ... The river depicted in the shield is our mighty Snake or Shoshone River, a stream of great majesty.

In regard to the coloring of the emblems used in the making of the great seal of the state of Idaho, my principal desire was to use

such colors as would typify pure Americanism and the history of the state. As Idaho was a virgin state, I robed my goddess in white and made the liberty cap on the end of the spear the same color. In representing the miner, I gave him the garb of the period suggested by such mining authorities as former United States Senator George Shoup, of Idaho, former Governor Norman B. Willey of Idaho, former Governor James H. Hawley of Idaho, and other mining men and early residents of the state who knew intimately the usual garb of the miner. Almost unanimously they said, "Do not put the miner in a red shirt." "Make the shirt a grayish brown," said Captain J.J. Wells, chairman of the seal committee. The "Light of the Mountains" is typified by the rosy glow which precedes the sunrise."

History.

I.C., § 59-1005A, as added by 1994, ch. 444,
§ 1, p. 1425.

59-1006. Officers may administer oaths. — Every executive and judicial officer may administer and certify oaths.

History.

R.S., § 450; reen. R.C. & C.L., § 338; C.S.,
§ 476; I.C.A., § 57-1006.

STATUTORY NOTES**Cross References.**

Affirmation in place of oath, § 9-1405.

Before whom oaths may be taken, § 59-403.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Oaths and Affirmations,
§§ 5, 6.

59-1007. Office hours. — Unless otherwise provided by law, every officer must keep his office open for transaction of business from eight o'clock a.m. until 5 o'clock p.m., each day except upon Saturdays, Sundays, holidays and days upon which office closure is due to mandatory leave without pay.

History.

R.S., § 452; reen. R.C. & C.L., § 339; am.
1919, ch. 8, § 39, p. 66; C.S., § 477; I.C.A.,

§ 57-1007; am. 1955, ch. 126, § 1, p. 253; am.
2010, ch. 172, § 1, p. 356.

STATUTORY NOTES**Amendments.**

The 2010 amendment, by ch. 172, added
"and days upon which office closure is due to
mandatory leave without pay."

Effective Dates.

Section 2 of S.L. 2010, ch. 172 declared an
emergency. Approved March 31, 2010.

JUDICIAL DECISIONS**Keeping Open After Hours.**

While, under this section, secretary of state

is not required to keep his office open after the
statutory closing time of each business day, if

he does keep it open after that time and is transacting business there, it is his duty to receive such business as is presented to him. Grant v. Lansdon, 15 Idaho 342, 97 P. 960 (1908).

59-1008. Signature of ex officio officers. — When an officer discharges ex officio the duties of another office than that to which he is elected or appointed, his official signature and attestation must be in the name of the office the duties of which he discharges.

History.

R.S., § 453; reen. R.C. & C.L., § 340; C.S., § 478; I.C.A., § 57-1008.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 18.

59-1009. Official records open to inspection. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised R.S., § 454; am. R.C., § 341; reen. C.L., § 341; C.S., § 479; I.C.A., § 57-1009, was repealed by S.L. 1990, ch. 213, § 2, effective July 1, 1990. For present law, see §§ 9-337 to 9-347.

59-1010. Officers to keep accounts. — It shall be the duty of all state, county, city and precinct officers, who receive fees for services in an official capacity, or who receive public moneys for safekeeping, to at all times keep a public account of the same, consisting of a day book and ledger in which shall be entered all receipts of fees or moneys, with a brief statement of from whom and on what account the same were received; and a like account of all disbursements of such moneys, and to whom and on what account the same were paid. A failure to comply with the requirements of this section shall subject the offender, upon conviction, to the payment of a fine not exceeding three hundred dollars, or to imprisonment in the county jail for a period not exceeding six (6) months, or to both such fine and imprisonment.

History.

1901, p. 208, § 1; am. 1903, p. 282, § 1; reen. R.C. & C.L., § 342; C.S., § 480; I.C.A., § 57-1010.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 259 to 269.

59-1011. Furnishing account books — Examination by citizens. — It shall be the duty of the state and county officers respectively charged with furnishing books and stationery for public use, to furnish suitable books for the purpose to such officers; and such books shall be subject to examination by any citizen at any reasonable time, and such citizen shall be entitled to take memoranda from the same without charges being imposed: provided, if any person or persons desire certified copies of any such account, the officer

or person in charge of said books shall be entitled to demand and receive fees for the same, as for copies of other public records in his control.

History.

1901, p. 208, § 2; reen. R.C. & C.L., § 343; C.S., § 481; I.C.A., § 57-1011.

JUDICIAL DECISIONS

ANALYSIS

List of certain taxpayers.
Raw notes.

List of Certain Taxpayers.

A list of names of dairy product producers who paid the taxes levied by § 25-3117, which list was compiled by the Idaho dairy products commission, is a "public record" and, thus, was subject to inspection by a private citizen. *Dalton v. Idaho Dairy Prods. Comm'n*, 107 Idaho 6, 684 P.2d 983 (1984).

Raw Notes.

Trial court erred in holding that as a matter of law, "raw notes" ("handwritten notes," "raw minutes"), taken by clerk of the board of county commissioners during meetings of the county board of commissioners, could not be public writings. *Fox v. Estep*, 118 Idaho 454, 797 P.2d 854 (1990).

59-1012. Sale of pamphlet laws — Disposition of funds — Exception. — All publications of laws and regulations and the constitution of the state of Idaho, issued in pamphlet form, other than the regular edition of the session laws, may be sold by the officer or officers having the same published, at a price which will cover the cost of publication and distribution. Provided, this act shall not apply to pamphlets and booklets published and issued by the Idaho department of fish and game for the purpose of giving notice and information concerning fish and game regulations and reports. Such pamphlets and booklets issued by said department of fish and game shall be printed and issued at the expense of said department and the cost thereof paid from the fish and game account. Provided further, that said department may publish on a regular basis a magazine, and provide to the public other publications, printed matter and materials as will promote the ethical use and conservation of fish and wildlife resources, or encourage citizen participation in department programs. The Idaho department of fish and game may establish fees for said publications and materials. Said fees shall be remitted to the state treasurer for deposit in the fish and game account.

History.

1905, p. 231, §§ 1, 2; am. R.C., § 343a; reen. C.L., § 343a; C.S., § 482; I.C.A., § 57-

1012; am. 1941, ch. 21, § 1, p. 46; am. 1977, ch. 56, § 1, p. 107; am. 1983, ch. 59, § 1, p. 136.

STATUTORY NOTES

Cross References.

Department of fish and game, § 36-101 et seq.

Fish and game account, § 36-107.

Publication of income tax law and regulations, § 63-3039.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

The term "this act" in the second sentence refers to S.L. 1941, ch. 21, which is codified as this section.

59-1013. Sale of pamphlet laws — Penalty for nonfeasance. — Any

failure to comply with the provisions of the preceding section by any person or persons charged by law with the duty of publishing any of said laws as in said section provided for, shall be a misdemeanor, and upon conviction thereof in any court of competent jurisdiction the person guilty shall be fined in any sum not less than two hundred dollars nor more than three hundred dollars, and upon information, it shall be the duty of the attorney general or the prosecuting attorney of any county, to prosecute such person or persons, and upon conviction to collect such fine as may be imposed, and deposit the same with the state treasurer for the benefit of the general school fund.

History.

1905, p. 231, § 3; am. R.C., § 343b; reen.
C.L., § 343b; C.S., § 483; I.C.A., § 57-1013.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Attorney general, § 67-1401 et seq.

59-1014. Accounting for fees. — All state officers and agencies, who receive any money or evidences of indebtedness for or on account of the state or in payment of any fee, license or tax due the state, shall deposit the same with the state treasurer:

(a) daily, when the amount of cash, checks or other evidences of indebtedness accrued during any twenty-four (24) hour period is two hundred dollars (\$200) or more; or

(b) weekly in all other situations, unless the particular state officer has been granted specific permission to deposit at some other interval by the provisions of a resolution of the board of examiners, pursuant to section 67-2025, Idaho Code.

The state treasurer shall receive from the other state officers and agencies bank drafts, checks, post-office money orders and all evidences of indebtedness which are accepted as cash items by banks in the ordinary course of business, and shall deposit the same in banks in this state qualified as depositories of state money, subject, however, to final payment, and said treasurer shall issue his receipt for such evidences of indebtedness to the officer or agency entitled thereto.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$500.00, or by imprisonment in the county jail not exceeding six [(6)] months, or by both such fine and imprisonment.

History.

1909, p. 359; compiled and reen. C.L., § 343c; C.S., § 484; I.C.A., § 57-1014; am.
1976, ch. 42, § 6, p. 90.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.
State treasurer, § 67-1201 et seq.

Compiler's Notes.

The bracketed insertion in the last paragraph was added by the compiler.

Effective Dates.

Section 42 of S.L. 1976, ch. 42, provided

that this section should take effect on and after July 1, 1976.

JUDICIAL DECISIONS**ANALYSIS**

Clerk's bond covering warden's shortages.
Exceeding appropriation.

Clerk's Bond Covering Warden's Shortages.

In prosecution of former warden of state penitentiary for failure to account for proceeds from prison farm which came into hands of chief clerk of penitentiary of whose derelictions warden allegedly should have known, bond of chief clerk, covering major portion of time during which alleged derelictions took place, was admissible as bearing on degree of care that warden should have used. *State v. Taylor*, 59 Idaho 724, 87 P.2d 454 (1939).

Exceeding Appropriation.

Prohibitions of statute and constitution against creating any expense or incurring any liability against the state in excess of existing appropriations therefor apply to the time of incurring the expense or liability rather than to the time the particular bill or claim is presented for payment. *State ex rel. Hansen v. Parsons*, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

59-1014A. Accounting for losses. — All state officers and agencies shall, immediately upon discovering any loss of money in excess of two hundred dollars (\$200) or evidences of indebtedness of the officer or agency, report the same, in writing within five (5) working days of the discovery of the loss to the state treasurer or shall notify the state treasurer by telephone within one (1) working day of the discovery of the loss.

History.

I.C., § 59-1014A, as added by 1997, ch. 153,
§ 1, p. 435.

STATUTORY NOTES**Cross References.**

State treasurer, § 67-1201 et seq.

59-1015. Deficiencies — Creation prohibited — Exception. — No officer, employee or state board of the state of Idaho, or board of regents or board of trustees of any state institution, or any member, employee or agent thereof, shall enter, or attempt to offer to enter into any contract or agreement creating any expense, or incurring any liability, moral, legal or otherwise, or at all, in excess of the appropriation made by law for the specific purpose or purposes for which such expenditure is to be made, or liability incurred, except in the case of insurrection, epidemic, invasion, riots, floods or fires.

History.

1915, ch. 164, § 1, p. 361; reen. C.L.,
§ 343d; C.S., § 485; I.C.A., § 57-1015.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality of claim payments.
Exceeding appropriation.

Constitutionality of Claim Payments.

Where state industrial insurance fund became exhausted and department contracted debts in excess of specific appropriation therefor, statute enacted before state board of examiners had passed upon or approved claims for such excess expenditures violated constitution prohibiting legislature from passing on claims against state not acted on by state board of examiners, and constitution forbidding passage of "local or special laws." State ex rel. Hansen v. Parsons, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, State ex rel. Williams v. Musgrave, 84 Idaho 77, 370 P.2d 778 (1962).

Exceeding Appropriation.

Any indebtedness attempted to be created

against the state, by a state officer, whose duty it is to represent the state in action to recover moneys embezzled by another state officer, in excess of the appropriation therefor, is void. State v. National Sur. Co., 29 Idaho 670, 161 P. 1026 (1916).

Prohibitions of statute and constitution against creating any expense or incurring any liability against the state in excess of existing appropriations therefor apply to the time of incurring the expense or liability rather than to the time the particular bill or claim is presented for payment. State ex rel. Hansen v. Parsons, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, State ex rel. Williams v. Musgrave, 84 Idaho 77, 370 P.2d 778 (1962).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 267 to 269.

59-1016. Deficiencies — Contracts in creation of, void. — Any indebtedness attempted to be created against the state in violation of the provisions of this chapter, or any indebtedness attempted to be created against the state in excess of the appropriation provided for in any act, shall be void. The income accruing to any state institution, after the same has been certified quarterly to the board of trustees of any such institution by the auditor, shall be deemed an appropriation to such institution, and shall be governed by the provisions of this chapter regarding appropriations, and regarding the creation of indebtedness in excess of such appropriation.

History.

1915, ch. 164, § 2, p. 361; reen. C.L., § 342e [343e]; C.S., § 486; I.C.A., § 57-1016.

JUDICIAL DECISIONS

ANALYSIS

Exceeding appropriation.
Passing on claims.

Exceeding Appropriation.

Prohibition of statute and constitution against creating any expense or incurring any liability against the state in excess of existing appropriations therefor apply to the time of incurring the expense of liability rather than to the time the particular bill or claim is presented for payment. State ex rel. Hansen

v. Parsons, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, State ex rel. Williams v. Musgrave, 84 Idaho 77, 370 P.2d 778 (1962).

Passing on Claims.

Where state industrial insurance fund became exhausted and department contracted

debts in excess of specific appropriation therefor, statute enacted before state board of examiners had passed upon or approved claims for such excess expenditures violated constitution prohibiting legislature from passing on claims against state not acted on by state

board of examiners, and constitution forbidding passage of "local or special laws." State ex rel. Hansen v. Parsons, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, State ex rel. Williams v. Musgrave, 84 Idaho 77, 370 P.2d 778 (1962).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 253.

59-1017. Deficiencies — Penalty for creating. — Any person violating the provisions of the two preceding sections shall be deemed guilty of a misdemeanor, and shall be disqualified from holding any state office or from being employed by the state of Idaho or by any board of regents or board of trustees of any state institution for a period of four (4) years from and after the commission of the offense.

History.

1915, ch. 164, § 3, p. 361; compiled and

reen. C.L., § 343f; C.S., § 487; I.C.A., § 57-1017.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided for, § 18-113.

JUDICIAL DECISIONS

ANALYSIS

Exceeding appropriation.

Right to salary.

When penalty applied.

Exceeding Appropriation.

Where state industrial insurance fund became exhausted and department contracted debts in excess of specific appropriation therefor, statute enacted before state board of examiners had passed upon or approved claims for such excess expenditures violated constitution prohibiting legislature from passing on claims against state not acted on by state board of examiners, and constitution forbidding passage of "local or special laws." State ex rel. Hansen v. Parsons, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, State ex rel. Williams v. Musgrave, 84 Idaho 77, 370 P.2d 778 (1962).

Prohibitions of statute and constitution against creating any expense or incurring any liability against the state in excess of existing appropriations therefor apply to the time of incurring the expense or liability rather than to the time the particular bill or claim is presented for payment. State ex rel. Hansen v. Parsons, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, State ex rel.

Williams v. Musgrave, 84 Idaho 77, 370 P.2d 778 (1962).

Right to Salary.

Where it appeared that state insurance manager has been a duly qualified and acting official, that he continued to act as such until date on which he contracted an obligation in excess of appropriation made by legislature, that he continued to hold office, notwithstanding alleged forfeiture of office by his act creating the deficiency claim, that thereafter the governor reappointed him to the same office, and that there was never at any time any other claimant to the office, he was entitled to receive salary as state insurance manager. O'Malley v. Parsons, 59 Idaho 635, 85 P.2d 739 (1938).

When Penalty Applied.

Before the penalty prescribed by this section can be invoked against or applied to an officer, it must be judicially determined in some appropriate proceeding, to which he is

made a party, that he has been guilty of the offense charged. *O'Malley v. Parsons*, 59 Idaho 635, 85 P.2d 739 (1938).

59-1018. Uniform facsimile signature of public officials act — Definitions. — As used in this act

(a) "Public Security" means a bond, note, certificate of indebtedness, or other obligation for the payment of money, issued by this state or by any of its departments, agencies, or other instrumentalities or by any of its political subdivisions.

(b) "Instrument of Payment" means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(c) "Authorized Officer" means any official of this state or any of its departments, agencies, or other instrumentalities or any of its political subdivisions whose signature to a public security or instrument of payment is required or permitted.

(d) "Facsimile Signature" means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

History.

1959, ch. 11, § 1, p. 28.

STATUTORY NOTES

Compiler's Notes.

As enacted the section heading of this section read, "Definitions."

The term "this act" refers to S.L. 1959, ch. 11, which is compiled as §§ 59-1018 to 59-1023.

RESEARCH REFERENCES

C.J.S. — 80 C.J.S., Signatures, § 1.

59-1019. Facsimile signature. — (1) Any authorized officer, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

- (a) Any public security provided that at least one (1) signature required or permitted to be placed thereon shall be manually subscribed, and
- (b) Any instrument of payment.

Upon compliance with this act by the authorized officer, his facsimile signature has the same legal effect as his manual signature.

(2) The governor, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

- (a) All instruments, documents and papers requiring his signature which originate with the state board of land commissioners or department of public lands [department of lands], except deeds of the public lands of the state; and
- (b) All instruments, documents and papers acted upon by the state board of examiners; and

(c) All instruments, documents and papers relating to appointment and commissioning of notaries public.

Upon compliance with this act by the governor, his facsimile signature has the same legal effect as his manual signature.

History.

1959, ch. 11, § 2, p. 28; am. 1965, ch. 132, § 1, p. 260.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

State board of land commissioners, § 58-101.

State board of examiners, § 67-2001 et seq.

name change of the referenced department. See § 58-101.

The term "this act" refers to S.L. 1959, ch. 11, which is compiled as §§ 59-1018 to 59-1023.

Compiler's Notes.

The bracketed insertion in paragraph (2)(a) was added by the compiler to reflect the 1974

Effective Dates.

Section 2 of S.L. 1965, ch. 132 declared an emergency. Approved March 13, 1965.

RESEARCH REFERENCES

A.L.R. — Procuring signature by fraud as forgery. 11 A.L.R.3d 1074.

59-1020. Use of facsimile seal. — When the seal of this state or any of its departments, agencies, or other instrumentalities or any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

History.

1959, ch. 11, § 3, p. 28.

STATUTORY NOTES

Cross References.

"Public seal" defined, § 9-401.

59-1021. Violation and penalty. — Any person who with intent to defraud uses on a public security or an instrument of payment:

(a) A facsimile signature, or any reproduction of it, or [of] any authorized officer, or

(b) Any facsimile seal, or any reproduction of it, of this state or any of its departments, agencies, or other instrumentalities or any of its political subdivisions is guilty of a felony.

History.

1959, ch. 11, § 4, p. 28.

STATUTORY NOTES

Cross References.

Punishment for felony when not otherwise provided, § 18-112.

was added by the compiler to supply the probable intended term.

Compiler's Notes.

The bracketed insertion in subsection (a)

59-1022. Uniformity of interpretation. — This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History.

1959, ch. 11, § 5, p. 28.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1959, ch.

11, which is compiled as §§ 59-1018 to 59-1023.

59-1023. Short title. — This act may be cited as the Uniform Facsimile Signature of Public Officials Act.

History.

1959, ch. 11, § 6, p. 28.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1959, ch. 11, which is compiled as §§ 59-1018 to 59-1023.

Section 7 of S.L. 1959, ch. 11 read: "If any provision of this act or the application thereof

to any person or circumstance is held invalid, the invalidity shall not effect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

59-1024. Open meetings. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1961, ch. 272, § 1, was repealed by S.L. 1974, ch. 187,

§ 9. For present comparable law, see §§ 67-2340 to 67-2343.

59-1025. Eligibility of blind persons under merit systems. — No partially or totally blind person shall be denied employment under the provisions of any merit system now in effect or hereafter to be established in any department, agency or office of the state of Idaho solely because of his blind condition unless it is clearly demonstrated that sight is essential to the performance of duties. When applying for employment under the provisions of the merit system, a partially or totally blind person may use the services of a reader to assist him in any written examinations.

History.

1965, ch. 88, § 1, p. 148.

STATUTORY NOTES

Cross References.

Personnel system for state employees,
§ 67-5301 et seq.

59-1026. Willful and knowing avoidance of competitive bidding and procurement statutes — Civil penalties. — It is a violation of this section for an official of any political subdivision or the state itself to willfully or knowingly avoid compliance with procurement or competitive bidding statutes or to willfully or knowingly split or separate purchases or work projects with the intent of avoiding compliance with such statutes. If any officer or employee of any public entity willfully or knowingly violates this section, the public entity which the officer or employee serves shall be liable for civil penalties not to exceed five thousand dollars (\$5,000) for each offense, such civil penalty to be payable to the office of the public agency bringing an enforcement action, upon court order, to reimburse the reasonable expense of enforcing compliance with competitive bidding and procurement statutes.

History.

I.C., § 59-1026, as added by 2005, ch. 213,
§ 36, p. 637.

STATUTORY NOTES

Prior Laws.

Former § 59-1026, which comprised 1975,

ch. 95, § 1, p. 192, was repealed by S.L. 2005,
ch. 213, § 35.

CHAPTER 11

SOCIAL SECURITY BENEFITS

SECTION.

- 59-1101. Acceptance of benefits of Federal Security Act.
- 59-1101A. Authority to access records.
- 59-1102. Payroll and salary deductions.
- 59-1103. Existing rights preserved.
- 59-1104. Inclusion of employees — Time allowed.
- 59-1105. Contributions from local entities.
- 59-1106. State trust fund established.
- 59-1106A. Revolving account for social security administration.
- 59-1107. Payments from state trust fund.
- 59-1107A. Recovery of overpayments — Payment of expenses and distribution of recoveries.

SECTION.

- 59-1108. Receipts of state trust fund.
- 59-1109. Appropriations — Date of transfer.
- 59-1110. Assessment of special funds.
- 59-1111. Payments by endowed institutions.
- 59-1112. Payments from special funds.
- 59-1113. Referendum on acceptance by governmental retirement services.
- 59-1114. Majority favoring acceptance — Agreement entered into for coverage.
- 59-1115. Employer's portion of social security tax for school district personnel.

59-1101. Acceptance of benefits of Federal Security Act. — The state of Idaho in behalf of all of its officers and employees and the officers and employees of all of its counties, cities, and towns and of any and all of its municipal corporations and political subdivisions, including, for the purpose of this chapter, drainage districts organized under chapter 29, title

42, Idaho Code, and irrigation districts organized under chapter 1, title 43, Idaho Code, and water districts and boards of control of federal reclamation projects, and soil conservation districts, and housing authorities organized and created pursuant to chapter 44, title 50, Idaho Code, hereby accepts the benefits of the provisions of the Federal Security Act, 53 Stat. 1373, for Old Age and Survivors' Insurance Benefits, whenever the provisions of such act are extended to embrace their officers and employees; provided, however, that any services of an emergency nature, positions the compensation for which is on a fee basis, or service performed by a student, shall not be considered as employment within the meaning of this chapter.

History.

1949, ch. 285, § 1, p. 586; am. 1951, ch. 295, § 1, p. 652; am. 1953, ch. 81, § 1, p. 105; am.

1953, ch. 190, § 1, p. 299; am. 1955, ch. 14, § 1, p. 17; am. 1961, ch. 86, § 1, p. 117.

STATUTORY NOTES

Federal References.

Title II of Act August 10, 1939, c. 666, 53 Stat. 1362 to 1378, known as the Social Security Act Amendments of 1939, was evidently intended by the reference in this section to the Federal Security Act. Said Title II pertains to federal old age and survivors insurance benefits and is codified as 42 U.S.C.S. § 401 et seq.

25, p. 533, concerning housing authority law, was repealed by S.L. 1967, ch. 429, § 472. For present comparable provisions, see § 50-1901 et seq.

Effective Dates.

Section 3 of S.L. 1953, ch. 81 declared an emergency. Approved March 2, 1953.

Section 2 of S.L. 1953, ch. 190 declared an emergency. Approved March 12, 1953.

Section 2 of S.L. 1961, ch. 86 declared an emergency. Approved March 3, 1961.

Compiler's Notes.

Chapter 44, title 50, referred to in this section, comprising S.L. 1939, ch. 234, §§ 1 to

RESEARCH REFERENCES

A.L.R. — Construction and application of attorney's fee provision (42 U.S.C. § 406 (b)(1)) of Federal Social Security Act. 22 A.L.R.3d 1081.

evaluating severity of claimant's pain in social security disability case under § 3 (a)(1) of Social Security Disability Benefits Reform Act of 1984, 42 U.S.C. § 423(d)(5)(A). 165 A.L.R. Fed. 203.

Standard and sufficiency of evidence when

59-1101A. Authority to access records. — The state controller serving as the state social security administrator shall take such actions as may be necessary to ensure compliance with 42 U.S.C. section 418 and for this purpose shall have the power and authorization to inspect and copy, at any reasonable time, the records maintained by an agency whenever it is necessary for such compliance purposes. Access shall include, but not be limited to, examining, copying, transferring, receiving and making use of records, papers, letters, correspondence and transactions, whether printed or electronic. Such records may include otherwise nonpublic confidential employer and individual information necessary for the purposes of complying with 42 U.S.C. section 418. The administrator as recipient will implement, maintain and comply with technical and physical safeguards to protect the security, confidentiality and integrity of information consistent with the confidentiality rules and requirements of the issuing department or agency. For purposes of this section, "agency" shall mean each department,

division, public body corporate and politic, elected and appointed board and commission, office and institution, educational or otherwise and instrumentalities thereof, including agencies hereinafter created in state and local government as set forth in chapter 11, title 59, Idaho Code.

History.

I.C., § 59-1101A, as added by 2011, ch. 283,
§ 3, p. 766.

STATUTORY NOTES**Cross References.**

State controller, § 67-1001 et seq.

Effective Dates.

Section 4 of S.L. 2011, ch. 283 declared an
emergency. Approved April 11, 2011.

59-1102. Payroll and salary deductions. — Any and all officials, boards, commissions, directors and boards having charge and preparation of payrolls and payment of salaries and wages to officers and employees of the state of Idaho, or any of its political subdivisions as set forth in section 59-1101[, Idaho Code], are hereby authorized and directed to make payroll and salary and wage deductions and to handle and dispose of the same as required by the Federal Social Security Act, as amended to include such officers and employees within the eligible group, and any official or board being authorized to disburse funds for the salary or wages, or of any officer or employee who shall come within such eligible group is authorized to pay and disburse out of any funds available for operation and maintenance such sums, and dispose or handle the same in such manner as is required and necessary to make payments and benefits of said Federal Social Security Act available to such officers and employees who shall become eligible.

History.

1949, ch. 285, § 2, p. 586.

STATUTORY NOTES**Federal References.**

The federal social security act, referred to in this section, is codified as 42 U.S.C.S. § 301 et seq.

Compiler's Notes.

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.

59-1103. Existing rights preserved. — Nothing contained in this act should deprive any person of benefit under any existing retirement system, nor repeal, amend, modify or supersede any law, charter, amendment or ordinance established or pertaining to existing retirement systems.

History.

1949, ch. 285, § 3, p. 586.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1949, ch. 285, which is compiled as §§ 59-1101 and 59-1102 to 59-1104.

59-1104. Inclusion of employees — Time allowed. — Each department and agency of the state of Idaho, and each political subdivision as defined in section 59-1101[, Idaho Code], which shall pay and disburse salary and wages separately shall have ninety (90) days from and after the date when the Federal Social Security Act shall be amended to include its officers and employees in the eligible group within which to take the necessary steps to include its officers and employees within such eligible group.

History.

1949, ch. 285, § 4, p. 586.

STATUTORY NOTES

Federal References.

The federal social security act, referred to in this section, is codified as 42 U.S.C.S. § 301 et seq.

Compiler's Notes.

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.

59-1105. Contributions from local entities. — Under policies and procedures to be prescribed by the state controller, each municipal corporation, political subdivision, drainage or irrigation district, hereinafter referred to as public employer, coming within the provisions of this chapter, shall remit to the state controller the amounts required to be withheld from the salary or wages of each officer and employee together with the matching contribution of such public employer and any interest or penalties imposed for late remittances, in the manner and form prescribed by the state controller. Such moneys shall be deposited in the social security trust account [fund].

In case any public employer does not make, at the time or times due, the payments provided for under an agreement pursuant to this section, there shall be added, as part of the amounts due, interest at the rate of six percent (6%) per annum from the date due until paid plus a penalty of six percent (6%) and the state controller may, at his discretion, deduct any delinquent amounts including interest and penalty from any funds or moneys due such delinquent public employer as may be in the possession of the state treasurer, and credit the same to the social security trust account [fund].

If any public employer is delinquent in the payment of any moneys required to be paid under the provisions of this chapter, and is so delinquent for more than thirty (30) days, the state controller shall so notify the board of county commissioners who shall thereupon order the county treasurer to withhold the equivalent amount of such moneys as are delinquent, together with the equivalent amount of any penalty or interest which may be due as a result of such delinquency, from any funds or moneys due such delinquent public employer as may be in the possession of the county treasurer, and to

pay the same over to the state controller, for the credit of the social security trust account [fund].

History.

I.C., § 59-1105, as added by 1951, ch. 295, § 2, p. 652; am. 1980, ch. 113, § 1, p. 251; am.

1994, ch. 180, § 134, p. 420; am. 2003, ch. 32, § 30, p. 115.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.
State treasurer, § 67-1201 et seq.

Compiler's Notes.

The bracketed insertions at the end of each paragraph were added by the compiler to correct the name of the referenced fund. See § 59-1106.

Effective Dates.

Section 3 of S.L. 1951, ch. 295 declared an emergency. Approved March 22, 1951.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 134 of S.L. 1994, ch. 180 became effective January 2, 1995.

RESEARCH REFERENCES

A.L.R. — Construction, application, and effect, with respect to withholding social security and unemployment compensation

taxes, of statutes imposing penalties for tax evasion or default. 22 A.L.R.3d 8.

59-1106. State trust fund established. — There is hereby established a fund in the state treasury to be known as the social security trust fund for the sole purpose of receiving contributions of the state and political subdivisions, and taxes on employees, under the Federal Old Age and Survivors Insurance program, under Public Law 734, 81st Congress of the United States, and in accordance with sections 59-1101 — 59-1104[, Idaho Code].

History.

1951, ch. 18, § 1, p. 27.

STATUTORY NOTES

Federal References.

Public Law 81-734, referred to in this section, is codified as 42 U.S.C.S. § 301 et seq.

section was added by the compiler to conform to the statutory citation style.

Compiler's Notes.

The bracketed insertion at the end of the

59-1106A. Revolving account for social security administration. — There is hereby appropriated out of the general account in the state operating fund, not otherwise appropriated, the sum of fifty thousand dollars (\$50,000) to be used as a revolving account in the state treasury by the state controller to handle remittances that must be made to the federal social security administration pending the making of adjustments and the collection of shortages in remittances for local government entities. The

state controller shall prescribe and adopt all necessary procedures for implementing the purpose of the revolving account.

History. § 1, p. 1097; am. 1980, ch. 114, § 1, p. 252;
I.C., § 59-1106A, as added by 1972, ch. 376, am. 1994, ch. 180, § 135, p. 420.

STATUTORY NOTES

Cross References. after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 135 of S.L. 1994, ch. 180 became effective January 2, 1995.

State controller, § 67-1001 et seq.

Effective Dates. Section 2 of S.L. 1972, ch. 376 provided that the act should take effect from and after July 1, 1972.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and

59-1107. Payments from state trust fund. — Moneys now or hereafter in such fund are hereby appropriated to the state board of examiners for the sole purpose of making payments to the United States in accordance with said Public Law 734. Such payments shall be made in such amounts and at such times as the state controller shall certify them to be due and payable.

History. 1951, ch. 18, § 2, p. 27; am. 1994, ch. 180, § 136, p. 420.

STATUTORY NOTES

Cross References. that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 136 of S.L. 1994, ch. 180 became effective January 2, 1995.

State board of examiners, § 67-2001 et seq.

State controller, § 67-1001 et seq.

Federal References. Public Law 81-734, referred to in this section, is codified as 42 U.S.C.S. § 301 et seq.

Effective Dates. Section 241 of S.L. 1994, ch. 180 provided

59-1107A. Recovery of overpayments — Payment of expenses and distribution of recoveries. — The state controller is authorized to recover on behalf of the state and all governmental entities enumerated in section 59-1101, Idaho Code, and on behalf of all officers and employees thereof, social security overpayments made to the United States treasury.

The expenses incurred by the state controller in recovering such overpayments for a state agency and its employees or any governmental entity other than a school district and its employees shall be charged to the state agency or such governmental entity. In the event the state controller incurs expenses in connection with a program to seek such a recovery on behalf of more than one (1) state agency or governmental entity, he shall allocate such expenses to such state agencies and governmental entities in such manner as he deems reasonable. The state controller may bill state agencies and

governmental entities other than school districts directly for such expenses or may reduce the amount of their recovery of social security funds or credits by the amount of such expenses.

Expenses incurred for recovery of funds on behalf of school districts and their employees may be paid out of any recoveries of overpayments on behalf of school districts.

The state controller may take such actions as he deems reasonable in the recovery of such overpayments including contracting with third parties for the recovery of such funds.

The full amount of any recoveries of overpayments for employees of the state and all governmental entities shall be refunded to such employees. The amount of any recoveries on behalf of the state and its agencies and school districts after deducting the expenses of collection shall be transferred to the state general account. Any expenses previously paid by a state agency shall be refunded to such state agency from such recoveries. Any unpaid expenses shall be paid from such recoveries. The amount of any recoveries on behalf of other governmental entities after deducting any unpaid expenses of collection shall be refunded to such governmental entities or allowed as a credit against future social security liability.

History.

I.C., § 59-1107A, as added by 1983 (Ex. Sess.), ch. 2, § 1, p. 6; am. 1994, ch. 180, § 137, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Effective Dates.

Section 2 of S.L. 1983 (Ex. Sess.), ch. 2 declared an emergency. Approved May 12, 1983.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and

after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 137 of S.L. 1994, ch. 180 became effective January 2, 1995.

59-1108. Receipts of state trust fund. — Collections into said fund shall be paid into said fund under such policies and procedures as shall be prescribed by the state controller, and shall consist of all moneys received from the various political subdivisions of the state, all state contributions for participation in the Federal Old Age and Survivors Insurance program, and all taxes collected from employees covered by said program.

History.

1951, ch. 18, § 3, p. 27; am. 1994, ch. 180, § 138, p. 420; am. 2003, ch. 32, § 31, p. 115.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Federal References.

The "Federal Old Age and Survivors Insur-

ance program" refers to P.L. 81-734, which is codified as 42 U.S.C.S. § 301 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided

that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 138 of S.L. 1994, ch. 180 became effective January 2, 1995.

59-1109. Appropriations — Date of transfer. — Appropriations from the general fund of the state for the purposes of said Public Law 734, in accordance with sections 59-1101 — 59-1104[, Idaho Code], shall be transferred into said social security trust fund on the effective date of any such appropriation acts.

History.
1951, ch. 18, § 4, p. 27.

STATUTORY NOTES

Cross References. Social security trust fund, § 59-1106.	Compiler's Notes. The bracketed insertion was added by the compiler to conform to the statutory citation style.
Federal References. Public Law 81-734, referred to in this section, is codified as 42 U.S.C.S. § 301 et seq.	

59-1110. Assessment of special funds. — The state board of examiners shall assess any special fund of the state from which salaries are paid, for the full amount due as state participation, when and as the state controller shall certify such amounts as due and payable; and all such amounts are hereby appropriated for transfer from whatever fund or funds as shall be concerned, to the social security trust fund, save and except the several endowment earning funds.

History.
1951, ch. 18, § 5, p. 27; am. 1994, ch. 180, § 139, p. 420.

STATUTORY NOTES

Cross References. Social security trust fund, § 59-1106. State board of examiners, § 67-2001 et seq. State controller, § 67-1001 et seq.	uary 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 139 of S.L. 1994, ch. 180 became effective January 2, 1995.
Effective Dates. Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [Jan-	

59-1111. Payments by endowed institutions. — When any endowed institution pays salaries and wages from its endowment earning funds, state contributions covering such salaries and wages shall be paid from any amount appropriated and transferred from the general fund of the state of Idaho as herein provided.

History.
1951, ch. 18, § 6, p. 27.

59-1112. Payments from special funds. — When any fund except endowment earning funds, is defined or dedicated to particular purpose or purposes, then the legislature hereby declares that the payment of state contributions in participation on salaries and wages paid from such fund for such purposes is in accord with such purpose or purposes.

History.

1951, ch. 18, § 7, p. 27.

STATUTORY NOTES

Effective Dates.

Section 8 of S.L. 1951, ch. 18 declared an emergency. Approved February 7, 1951.

59-1113. Referendum on acceptance by governmental retirement services. — The governor of the state of Idaho is hereby empowered to authorize a referendum, and to designate any agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Federal Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be included under said Federal Social Security Act.

History.

1957, ch. 23, § 1, p. 29.

STATUTORY NOTES

Federal References.

The federal social security act is codified as 42 U.S.C.S. § 301 et seq. Section 218(d)(3) of that act is codified as 42 U.S.C.S. § 418(d)(3).

59-1114. Majority favoring acceptance — Agreement entered into for coverage. — Should a majority of the eligible members of a retirement system established by the state or by a political subdivision thereof, in a referendum held in accordance with section 218(d)(3) of the Federal Social Security Act, vote favorably for inclusion of positions covered by said retirement system under said Federal Social Security Act, the governor, on behalf of the state of Idaho, is hereby empowered to enter into an agreement with the secretary of health, education, and welfare of the United States for the purpose of covering said positions under said Federal Social Security Act. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of agreement, administration, and other appropriate provisions as the governor and the secretary of health, education, and welfare shall agree upon, consistent with the provisions of the Federal Social Security Act.

History.

1957, ch. 23, § 2, p. 29.

STATUTORY NOTES

Federal References.

The federal social security act is codified as 42 U.S.C.S. § 301 et seq. Section 218(d)(3) of that act is codified as 42 U.S.C.S. § 418(d)(3).

Effective Dates.

Section 3 of S.L. 1957, ch. 23 declared an emergency. Approved February 9, 1957.

59-1115. Employer's portion of social security tax for school district personnel. — The board of trustees of each class of school district, shall pay the employer's social security tax for its personnel, as required by federal law.

The department of education shall transmit to the school districts from the appropriation made for that purpose the amount determined in section 33-1004F, Idaho Code.

History.

I.C., § 59-1115, as added by 1984, ch. 180, § 4, p. 426; am. 1986, ch. 252, § 2, p. 673; am.

1988, ch. 255, § 1, p. 494; am. 1994, ch. 428, § 14, p. 1368.

STATUTORY NOTES

Cross References.

Department of education, § 33-125.

ch. 342, § 1, p. 980; am. 1965, ch. 196, § 1, p. 437; am. 1975, ch. 150, § 1, p. 381, was repealed by S.L. 1984, ch. 180, § 3.

Prior Laws.

Former § 59-1115, which comprised 1963,

CHAPTER 12

GROUP INSURANCE

SECTION.

59-1201 — 59-1204. [Amended and Redesignated.]
59-1205. Position of personnel group insurance administrator created — Appointment. [Repealed.]
59-1206 — 59-1211. [Amended and Redesignated.]

SECTION.

59-1212. Existing group policies, contracts unaffected. [Repealed.]
59-1213, 59-1214. [Amended and Redesignated.]

59-1201. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 59-1201 was amended and redesi-

gnated as § 67-5763 by S.L. 1980, ch. 106, § 12.

59-1202. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 59-1202 was amended and redesi-

gnated as § 67-5764 by S.L. 1980, ch. 106, § 13.

59-1203. [Amended and Redesignated.]**STATUTORY NOTES****Compiler's Notes.**

Former § 59-1203 was amended and red-

esignated as § 67-5765 by S.L. 1980, ch. 106, § 14.

59-1204. [Amended and Redesignated.]**STATUTORY NOTES****Compiler's Notes.**

Former § 59-1204 was amended and red-

esignated as § 67-5766 by S.L. 1980, ch. 106, § 15.

59-1205. Position of personnel group insurance administrator created — Appointment. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1974, ch.

253, § 1, p. 1656, was repealed by S.L. 2009, ch. 6, § 1.

59-1206. [Amended and Redesignated.]**STATUTORY NOTES****Compiler's Notes.**

Former § 59-1206 was amended and red-

esignated as § 67-5761 by S.L. 1980, ch. 106, § 10.

59-1207. [Amended and Redesignated.]**STATUTORY NOTES****Compiler's Notes.**

Former § 59-1207 was amended and red-

esignated as § 67-5767 by S.L. 1980, ch. 106, § 16.

59-1208. [Amended and Redesignated.]**STATUTORY NOTES****Compiler's Notes.**

Former § 59-1208 was amended and red-

esignated as § 67-5768 by S.L. 1980, ch. 106, § 17.

59-1209. [Amended and Redesignated.]**STATUTORY NOTES****Compiler's Notes.**

Former § 59-1209 was amended and red-

esignated as § 67-5762 by S.L. 1980, ch. 106, § 11.

59-1210. [Amended and Redesignated.]**STATUTORY NOTES**

Compiler's Notes. Ignated as § 67-5769 by S.L. 1980, ch. 106,
Former § 59-1210 was amended and redesi- § 18.

59-1211. [Amended and Redesignated.]**STATUTORY NOTES**

Compiler's Notes. Ignated as § 67-5770 by S.L. 1980, ch. 106,
Former § 59-1211 was amended and redesi- § 19.

59-1212. Existing group policies, contracts unaffected. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. 253, § 1, p. 1656, was repealed by S.L. 2009,
This section, which comprised 1974, ch. ch. 6, § 2.

59-1213. [Amended and Redesignated.]**STATUTORY NOTES**

Compiler's Notes. Ignated as § 67-5771 by S.L. 1980, ch. 106,
Former § 59-1213 was amended and redesi- § 20.

59-1214. [Amended and Redesignated.]**STATUTORY NOTES**

Compiler's Notes. Ignated as § 67-5772 by S.L. 1980, ch. 106,
Former § 59-1124 was amended and redesi- § 21.

CHAPTER 13**PUBLIC EMPLOYEE RETIREMENT SYSTEM**

SECTION.

59-1301. Public employee retirement system created — Purpose — Duties of fiduciaries of retirement fund.

59-1302. Definitions.

59-1302A. [Amended and Redesignated.]

59-1303. Additional definitions for police officer status.

59-1303A. [Amended and Redesignated.]

59-1304. Retirement board — Appointment.

59-1305. Powers and duties of board — Indemnification.

59-1305A. [Amended and Redesignated.]

59-1306. Conformity with federal tax code to maintain qualified plan tax status.

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59-1307. Agreements with other retirement systems.

59-1308. Supplemental benefit plan — Contributions and expenses of the supplemental benefit plan — Indemnification.

59-1309. Allocation of extraordinary gains.

59-1309A. [Amended and Redesignated.]

59-1310. Admissibility in evidence of photoreproduced copies of records or documents maintained by the system — Destroying the original.

59-1310A, 59-1310B. [Repealed.]

59-1311. Public employee retirement fund created — Administration —

SECTION.

- Payment of benefits — Perpetual appropriation.
- 59-1311A. [Amended and Redesignated.]
- 59-1312. Selection of funding agent(s) — Investment of assets — Tax exemption.
- 59-1313. Trust agreement — Amended to comply with this chapter.
- 59-1314. Rules — Procedures for hearings prior to appeals — Appeals.
- 59-1315. Amount, terms and conditions of revised benefits are to be prospective only unless otherwise provided.
- 59-1316. Member's retirement records confidential.
- 59-1317. Rights to benefits inalienable.
- 59-1318. Rights in assets of system limited.
- 59-1319. Approved domestic retirement orders — Requirements.
- 59-1319A. [Amended and Redesignated.]
- 59-1320. Approved domestic retirement orders — Application and effect.
- 59-1321. Procedure for employees of political subdivisions to be included in retirement system.
- 59-1322. Employer contributions — Amounts — Rates — Amortization.
- 59-1323. Transfer of moneys for school personnel. [Repealed.]
- 59-1324. Transfer of moneys from state junior college account [state community college account].
- 59-1325. Employer remittance to board — Collection of delinquencies.
- 59-1325A. [Amended and Redesignated.]
- 59-1326. Procedure for complete or partial withdrawal of political subdivisions from the system — Calculation of withdrawal liability — Indemnification.
- 59-1327. Making a false claim — Misdemeanor.
- 59-1328. Administrative penalties for failure to comply with reporting requirements.
- 59-1329. Board regulations.
- 59-1330. [Amended and Redesignated.]
- 59-1331. Contributions.
- 59-1332. Pick up of employee contributions.
- 59-1332A, 59-1332B. [Amended and Redesignated.]
- 59-1333. Contributions from employees.
- 59-1334. Contributions — From policemen and firefighters.
- 59-1335. Voluntary contributions. [Repealed.]
- 59-1336, 59-1337. [Amended and Redesignated.]
- 59-1338. Conditions for contributions pursuant to which membership service retirement allowance may be granted certain school em-

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- ployees from July 1, 1965 to July 1, 1967. [Repealed.]
- 59-1339, 59-1340. [Amended and Redesignated.]
- 59-1341. Conditions of eligibility for service retirement.
- 59-1342. Computation of service retirement allowances — Minimum benefits.
- 59-1343. Conversion and commutation of certain payments.
- 59-1344. Time for payment of service retirement or early retirement.
- 59-1345. Vested member eligible for early retirement.
- 59-1346. Computation of early retirement allowances.
- 59-1347 — 59-1349. [Repealed.]
- 59-1350. Deferral of early retirement.
- 59-1351. Conversion of service retirement or early retirement allowances into optional retirement allowances — Form of optional retirement.
- 59-1352. Eligibility for disability retirement.
- 59-1352A. Public safety officer permanent disability benefit.
- 59-1353. Computation of disability retirement allowances.
- 59-1354. Time for payment of disability retirement allowance.
- 59-1354A. Members receiving a disability retirement returning to work.
- 59-1355. Postretirement allowance adjustments.
- 59-1356. Reemployment of retired members.
- 59-1357. Inactive member eligible for separation benefit. [Repealed.]
- 59-1358. Computation of separation benefits.
- 59-1359. Separation benefits.
- 59-1360. Cessation of membership — Reinstatement.
- 59-1361. Computation of death benefits — Method of payment — Optional death benefit.
- 59-1361A. Public safety officer death benefits.
- 59-1362. Purchase of active duty service in the armed forces.
- 59-1363. Purchase of membership service.
- 59-1365. Voluntary unused sick leave pool.
- 59-1371. Definitions.
- 59-1372. Transfer of all assets, liabilities, duties, obligations and rights to employee system.
- 59-1373. Accumulated teacher member contributions — Remaining contributions — Membership service credit.
- 59-1374. Employers — Members — Exceptions.
- 59-1375. Annuitants — Contribution in lieu of the requirement of six

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- months of membership service.
- 59-1376. Benefits to teacher members not to be less than those paid if system had not been integrated.
- 59-1377 — 59-1380. [Reserved.]
- 59-1381. Merger of city systems into state employee system — Definitions.
- 59-1382. City ordinance electing merger — Contract with board.
- 59-1383. Transfer of assets, liabilities, duties, and rights to state employee system — Governing board of city system abolished.
- 59-1384. Benefits not reduced.
- 59-1385. Contributions by employer — Adjustment to equalize benefits

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- payable and assets transferred — Corporate tax by city to pay contributions.
- 59-1386 — 59-1390. [Reserved.]
- 59-1391. Definitions.
- 59-1392. Transfer of all assets, liabilities, duties, obligations and rights of the firefighters' retirement fund to the employee system.
- 59-1393. Contributions.
- 59-1394. Excess costs — Additional contributions.
- 59-1395. Membership rights and duties.
- 59-1396. Limit on separation benefit.
- 59-1397. Benefits payable.
- 59-1398. Membership in social security.
- 59-1399. Cooperation of state insurance fund.

59-1301. Public employee retirement system created — Purpose — Duties of fiduciaries of retirement fund. — (1) A retirement and disability benefit system is created and placed under the management of a retirement board for the purpose of providing a retirement system and other benefits for public employees in the state of Idaho under this chapter. The retirement system shall be known as the “Public Employee Retirement System of Idaho.”

(2) The purpose of such system is to provide an orderly means whereby public employees in the state of Idaho who become superannuated or otherwise incapacitated as the result of age or disability, may be retired from active service without prejudice and without inflicting a hardship upon the employees retired, and to enable such employees to accumulate pension credits to provide for old-age, disability, death and termination of employment, thus effecting economy and efficiency in the administration of the state, county and local government. The legislature, therefore, declares that, in its considered judgment, the public good, and the general welfare of the citizens of this state required the enactment of this measure, under the police powers of the state.

With respect to the retirement fund created in this chapter, the fiduciaries of the fund shall discharge their duties with respect to the fund solely in the interest of the members and their beneficiaries

- (a) for the exclusive purpose of:
 - (i) providing benefits to members and their beneficiaries; and
 - (ii) defraying reasonable expenses of administering the system;
- (b) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;
- (c) by diversifying the investments of the fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
- (d) in accordance with the provisions of the Idaho Code governing the system.

History.

1963, ch. 349, Art. 1, § 1, p. 988; am. 1990,

ch. 231, § 1, p. 611; am. 1991, ch. 16, § 1, p. 36; am. 2000, ch. 13, § 1, p. 26.

STATUTORY NOTES**Cross References.**

Deferred compensation programs for employees of state or political subdivisions, § 59-513.

Federal social security act, acceptance, § 59-1101 et seq.

Firemen's retirement fund, § 72-1401 et seq.

Group insurance, §§ 67-5761 to 67-5772.

Group insurance, retirement program unaffected, § 67-5765.

Income tax deduction of certain retirement benefits, § 63-3022A.

Justices and judges retirement system, § 1-2001 et seq.

Personnel system for state employees, § 67-5301 et seq.

Policemen's retirement fund, § 50-1501 et seq.

Supplemental retirement system for widows of governors, senators or congressmen, § 59-1501 et seq.

Effective Dates.

Section 6 of S.L. 2000, ch. 13 provided that the act shall be in full force and effect on and after July 1, 2000.

JUDICIAL DECISIONS

Cited in: Jackson v. Minidoka Irrigation Dist., 98 Idaho 330, 563 P.2d 54 (1977);

McNichols v. Public Employee Retirement Sys., 114 Idaho 247, 755 P.2d 1285 (1988).

OPINIONS OF ATTORNEY GENERAL

Should legislation be adopted permitting a public subdivision to voluntary withdrawal from PERSI (Public Employees Retirement System of Idaho), PERSI while not having a fiduciary duty to challenge the legislation, would be charged with the responsibility of allowing political subdivisions to withdraw from the system and would, thus, have standing to bring a declaratory judgment action or to bring an original action in the supreme court seeking a judicial declaration of the

validity of the statute before allowing any withdrawals; thus, by obtaining such a declaration prior to actually allowing employers to withdraw, PERSI could avoid the logistical problems that could be created if the statute were declared invalid after a number of employers had already withdrawn and employees brought an action seeking damages for PERSI's breach of its fiduciary duty regarding employee's benefits. OAG 96-1.

RESEARCH REFERENCES

Am. Jur. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1 et seq.

C.J.S. — 63 C.J.S., Municipal Corporations, § 863 et seq.; 67 C.J.S., Officers and Public Employees, §§ 311 to 321; 81A C.J.S., States, § 211 et seq.; 70 C.J.S., Pensions, § 1 et seq.

A.L.R. — Rights in survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 A.L.R.3d 644.

Mandatory retirement based on age. 81 A.L.R.3d 811.

59-1302. Definitions. — (1) As used in this chapter, each of the terms defined in this section shall have the meaning given in this section unless a different meaning is clearly required by the context.

(2) "Active member" means any employee who is not establishing the right to receive benefits through his or her employer's participation in any other retirement system established for Idaho public employees, if such participation is mandated by applicable Idaho statutes other than this chapter. In no case will an employee be entitled to any benefit under this chapter for public service if such employee is establishing retirement benefit

entitlements by other Idaho statutes or federal statutes other than military service or social security for that same service.

(3) "Accumulated contributions" means the sum of amounts contributed by a member of the system, together with regular interest credit thereon.

(4) "Actuarial equivalent" means a benefit equal in value to another benefit, when computed upon the basis of the actuarial tables in use by the system.

(5) "Actuarial tables" means such tables as shall have been adopted by the board in accordance with recommendations of the actuary.

(5A) "Alternate payee" means a spouse or former spouse of a member who is recognized by an approved domestic retirement order as having a right to all or a portion of the accrued benefits in the retirement system with respect to such member.

(5B) "Approved domestic retirement order" means a domestic retirement order which creates or recognizes the existence of an alternate payee's right or assigns to an alternate payee the right to all or a portion of the accrued benefits of a member under the retirement system, which directs the system to establish a segregated account or disburse benefits to an alternate payee, and which the executive director of the retirement system has determined meets the requirements of sections 59-1319 and 59-1320, Idaho Code.

(5C) "Average monthly salary" means the member's average salary during the base period as calculated pursuant to rules adopted by the retirement board.

(5D)(a) "Base period" means the period of fifty-four (54) consecutive calendar months during which the member earned:

(i) The highest average salary; and

(ii) Membership service of at least one-half (1/2) the number of months in the period, excluding months of service attributable to:

A. Military service;

B. Service qualifying as minimum benefit pursuant to section 59-1342(5), Idaho Code; and

C. Worker's compensation income benefits.

(b) Effective October 1, 1993, the consecutive calendar months shall be forty-eight (48). Effective October 1, 1994, the consecutive calendar months shall be forty-two (42).

(c) Entitlement to a base period shall not vest until the effective date of that base period. The retirement benefits shall be calculated on the amounts, terms and conditions in effect at the date of the final contribution by the member.

(d) If no base period exists for a member, the member's average monthly salary shall be determined by the board, using standards not inconsistent with those established in this subsection.

(e) To assure equitable treatment for all members, salary increments inconsistent with usual compensation patterns may be disallowed by the board in determining average monthly salary and base period.

(6) "Beneficiary" means the person who is nominated by the written designation of a member, duly executed and filed with the board, to receive the death benefit.

(7) "Calendar year" means twelve (12) calendar months commencing on the first day of January.

(7A) "Contingent annuitant" means the person designated by a member under certain retirement options to receive benefit payments upon the death of the member. The person so designated must be born and living on the effective date of retirement.

(8) "Credited service" means the aggregate of membership service, prior service and disabled service.

(9) "Date of establishment" means July 1, 1965, or a later date established by the board or statute.

(10) "Death benefit" means the amount, if any, payable upon the death of a member.

(11) "Disability retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for disability retirement.

(12) "Disabled" means:

- (a) That the member is prevented from engaging in any occupation or employment for remuneration or profit as a result of bodily injury or disease, either occupational or nonoccupational in cause, but excluding disabilities resulting from service in the armed forces of any country other than the United States, or from an intentionally self-inflicted injury; and
- (b) That the member will likely remain so disabled permanently and continuously during the remainder of the member's life.

It is not necessary that a person be absolutely helpless or entirely unable to do anything worthy of compensation to be considered disabled. If the person is so disabled that substantially all the avenues of employment are reasonably closed to the person, that condition is within the meaning of "disabled." In evaluating whether a person is disabled, medical factors and nonmedical factors including, but not limited to, education, economic and social environment, training and usable skills may be considered.

Refusal to submit to a medical examination ordered by the board before the commencement of a disability retirement allowance or at any reasonable time thereafter shall constitute proof that the member is not disabled. The board shall be empowered to select for such medical examination one (1) or more physicians or surgeons who are licensed to practice medicine and perform surgery. The fees and expenses of such examination shall be paid from the administration account of the fund. No member shall be required to undergo such examination more often than once each year after he has received a disability retirement allowance continuously for two (2) years.

(12A) "Disabled service" means the total number of months elapsing from the first day of the month next succeeding the final contribution of a member prior to receiving a disability retirement allowance to the first day of the month following the date of termination of such disability retirement allowance. During such period, the member shall remain classified in the membership category held during the month of final contribution. The total number of months of disabled service credited for a person first becoming disabled after the effective date of this chapter shall not exceed the excess, if any, of three hundred sixty (360) over the total number of months of prior service and membership service.

(12B) “Domestic retirement order” means any judgment, decree, or order, including approval of a property settlement agreement which relates to the provision of marital property rights to a spouse or former spouse of a member, and is made pursuant to a domestic relations law, including the community property law of the state of Idaho or of another state.

(13) “Early retirement allowance” means the periodic payment becoming payable upon an active member’s ceasing to be an employee while eligible for early retirement.

(14)(A) “Employee” means:

(a) Any person who normally works twenty (20) hours or more per week for an employer or a school teacher who works half-time or more for an employer and who receives salary for services rendered for such employer;

(b) Elected officials or appointed officials of an employer who receive a salary;

(c) A person who is separated from service with less than five (5) consecutive months of employment and who is reemployed or reinstated by the same employer within thirty (30) days; or

(d) A person receiving differential wage payments as defined in 26 U.S.C. 3401(h) on or after July 1, 2009. A differential wage payment generally refers to an employer payment to an employee called to active duty in the uniformed services for more than thirty (30) days that represents all or a portion of the compensation he would have received from the employer if he were performing services for the employer.

(B) “Employee” does not include employment as:

(a) A person rendering service to an employer in the capacity of an independent business, trade or profession; or

(b) A person whose employment with any employer does not total five (5) consecutive months; or

(c) A person provided sheltered employment or made-work by a public employer in an employment or industries program maintained for the benefit of such person; or

(d) An inmate of a state institution, whether or not receiving compensation for services performed for the institution; or

(e) A student enrolled in an undergraduate, graduate, or professional-technical program at and employed by a state college, university, community college or professional-technical center when such employment is predicated on student status; or

(f) A person making contributions to the United States civil service commission [director of the office of personnel management] under the United States Civil Service System Retirement Act except that a person who receives separate remuneration for work currently performed for an employer and the United States government may elect to be a member of the retirement system in accordance with rules of the board; or

(g) A person not under contract with a school district or charter school, who on a day to day basis works as a substitute teacher replacing a contracted teacher and is paid a substitute wage as established by

district policy or who, on a day to day basis works as a substitute assistant replacing a staff instruction assistant or a staff library assistant and is paid a substitute wage as established by district policy; or

(h) A person occupying a position that does not exceed eight (8) consecutive months in a calendar year with a city, county, irrigation district, cemetery district or mosquito abatement district when the city, county, irrigation district, cemetery district or mosquito abatement district has certified, in writing to the system, the position is (i) seasonal or casual; and (ii) affected by weather, including parks, golf course positions and irrigation positions; or

(i) A person in a position that (i) is eligible for participation in an optional retirement program established under section 33-107A or 33-107B, Idaho Code, or (ii) would be eligible for participation in an optional retirement program established under section 33-107A or 33-107B, Idaho Code, if the person was not working less than half-time or less than twenty (20) hours per week.

(15) "Employer" means the state of Idaho, or any political subdivision or governmental entity, provided such subdivision or entity has elected to come into the system. Governmental entity means any organization composed of units of government of Idaho or organizations funded only by government or employee contributions or organizations who discharge governmental responsibilities or proprietary responsibilities that would otherwise be performed by government. All governmental entities are deemed to be political subdivisions for the purpose of this chapter.

(15A) "Final contribution" means the final contribution made by a member pursuant to sections 59-1331 through 59-1334, Idaho Code.

(16) "Firefighter" means an employee, including paid firefighters hired on or after October 1, 1980, whose primary occupation is that of preventing and extinguishing fires as determined by the rules of the board.

(17) "Fiscal year" means the period beginning on July 1 in any year and ending on June 30 of the next succeeding year.

(18) "Fund" means the public employee retirement fund established by this chapter.

(19) "Funding agent" means any bank or banks, trust company or trust companies, legal reserve life insurance company or legal reserve life insurance companies, or combinations thereof, any thrift institution or credit union or any investment management firm or individual investment manager selected by the board to hold and/or invest the employers' and members' contributions and pay certain benefits granted under this chapter.

(20) "Inactive member" means a former active member who is not an employee and is not receiving any form of retirement allowance, but for whom a separation benefit has not become payable.

(20A) "Lifetime annuity" means periodic monthly payments of income by the retirement system to an alternate payee.

(20B) "Lump sum distribution" means a payment by the retirement system of the entire balance in the alternate payee's segregated account, together with regular interest credited thereon.

(21) "Member" means an active member, inactive member or a retired member.

(22) "Membership service" means military service which occurs after the commencement of contributions payable under sections 59-1331 through 59-1334, Idaho Code, and service with respect to which contributions are payable under sections 59-1331 through 59-1334, Idaho Code, which, except for benefit calculations described in sections 59-1342 and 59-1353, Idaho Code, includes service transferred to a segregated account under an approved domestic retirement order.

(23) "Military service" means any period of active duty service in the armed forces of the United States including the national guard and reserves, under the provisions of title 10, title 32, and title 37, United States code, which commences less than ninety (90) days after the person ceases to be an employee and ends less than ninety (90) days before the person again becomes an employee. Provided, if a member fails to again become an employee as a result of his death while in active duty service, the member shall be entitled to military service through the date of death. Provided further, if a member fails to again become an employee due to a disability retirement resulting from service in the armed forces of the United States, the member shall be entitled to military service through the date the disability allowance becomes payable. In no event shall military service include:

(a) Any period ended by dishonorable discharge or during which termination of such service is available but not accepted; or

(b) Any active duty service in excess of five (5) years if at the convenience of the United States government, or in excess of four (4) years if not at the convenience of the United States government, provided additional membership service may be purchased as provided in section 59-1362, Idaho Code.

(24)(a) "Police officer" for retirement purposes shall be as defined in section 59-1303, Idaho Code.

(b) "POST" means the Idaho peace officer standards and training council established in chapter 51, title 19, Idaho Code.

(25) "Prior service" means any period prior to July 1, 1965, of military service or of employment for the state of Idaho or any political subdivision or other employer of each employee who is an active member or in military service or on leave of absence on the date of establishment, provided, however, an employee who was not an active member or in military service or on leave of absence on the date of establishment shall receive credit for the member's service prior to July 1, 1965, on the basis of recognizing two (2) months of such service for each month of membership service. For the purpose of computing such service, no deduction shall be made for any continuous period of absence from service or military service of six (6) months or less.

(26) "Regular interest" means interest at the rate set from time to time by the board.

(27) "Retired member" means a former active member receiving a retirement allowance.

(28) "Retirement" means the acceptance of a retirement allowance under this chapter upon termination of employment.

(29) "Retirement board" or "board" means the board provided for in sections 59-1304 and 59-1305, Idaho Code, to administer the retirement system.

(30) "Retirement system" or "system" means the public employee retirement system of Idaho.

(31)(A) "Salary" means:

(a) The total salary or wages paid to a person who meets the definition of employee by an employer for personal services performed and reported by the employer for income tax purposes, including the cash value of all remuneration in any medium other than cash.

(b) The total amount of any voluntary reduction in salary agreed to by the member and employer where the reduction is used as an alternative form of remuneration to the member.

(B) Salary in excess of the compensation limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded for any person who becomes a member of the system on or after July 1, 1996. The system had no limitations on compensation in effect on July 1, 1993. The compensation limitations set forth in section 401(a)(17) of the Internal Revenue Code shall not apply for an "eligible employee." For purposes of this subsection, "eligible employee" is an individual who was a member of the system before July 1, 1996.

(C) "Salary" does not include:

(a) Contributions by employers to employee held medical savings accounts, as those accounts are defined in section 63-3022K, Idaho Code.

(b) Lump sum payments inconsistent with usual compensation patterns made by the employer to the employee only upon termination from service including, but not limited to, vacation payoffs, sick leave payoffs, early retirement incentive payments and bonuses.

(c) Differential wage payments as defined in 26 U.S.C. 3401(h). A differential wage payment generally refers to an employer payment to an employee called to active duty in the uniformed services for more than thirty (30) days that represents all or a portion of the compensation he would have received from the employer if he were performing services for the employer.

(d) Employer payments to employees for or related to travel, mileage, meals, lodging or subsistence expenses, without regard to the taxability of such payments for federal income tax purposes and without regard to the form of payment, including payment made as reimbursement of an itemized expense voucher and payment made of an unvouchered expense allowance.

(31A) "Segregated account" means the account established by the retirement system for the alternate payee of a member who is not a retired member. It shall include the months of credited service and accumulated contributions transferred from the member's account.

(32) "Separation benefit" means the amount, if any, payable upon or subsequent to separation from service.

(33) "Service" means being shown on an employer's payroll as an employee receiving a salary. For each calendar month, service is credited only when a member is an employee as defined in subsection (14)(A) of this section and is employed for fifteen (15) days or more during the calendar month. Employment of fourteen (14) days or less during any calendar month shall not be credited. No more than one (1) month of service shall be credited for all service in any month.

(34) "Service retirement allowance" means the periodic payment becoming payable upon an active member's ceasing to be an employee while eligible for service retirement.

(35) "State" means the state of Idaho.

(36) "Vested member" means an active or inactive member who has at least five (5) years of credited service, except that a member, who at the time of his separation from service:

(a) Held an office to which he had been elected by popular vote or having a term fixed by the constitution, statute or charter or was appointed to such office by an elected official; or

(b) Was the head or director of a department, division, agency, statutory section or bureau of the state; or

(c) Was employed on or after July 1, 1965, by an elected official of the state of Idaho and occupied a position exempt from the provisions of chapter 53, title 67, Idaho Code; and

(d) Was not covered by a merit system for employees of the state of Idaho, is vested without regard to the length of credited service.

(37) The masculine pronoun, wherever used, shall include the feminine pronoun.

History.

1963, ch. 349, Art. 1, § 2, p. 988; am. 1965, ch. 265, § 1, p. 682; am. 1967, ch. 398, § 1, p. 1184; am. 1969, ch. 283, § 1, p. 856; am. 1969, ch. 460, § 1, p. 1288; am. 1970, ch. 153, § 1, p. 473; am. 1971, ch. 49, § 1, p. 105; am. 1972, ch. 245, § 1, p. 636; am. 1974, ch. 57, § 2, p. 1118; am. 1975, ch. 217, § 1, p. 604; am. 1976, ch. 97, § 1, p. 403; am. 1979, ch. 158, § 1, p. 478; am. 1984, ch. 132, § 1, p. 308; am. 1985, ch. 84, § 1, p. 164; am. 1986, ch. 147, § 1, p. 409; am. 1987, ch. 346, § 1, p. 735; am. 1989, ch. 189, § 1, p. 465; am. 1989, ch. 190, § 1, p. 469; am. 1990, ch. 130, § 1, p. 300; am. 1990, ch. 231, § 2, p. 611; am. 1990, ch. 249, § 1, p. 702; am. 1991, ch. 61, § 1, p. 140; am. 1992, ch. 220, § 1, p. 658; am. 1992, ch. 342, § 1, p.

1037; am. 1993, ch. 350, § 2, p. 1295; am. 1994, ch. 209, § 1, p. 658; am. 1994, ch. 276, § 1, p. 856; am. 1994, ch. 411, § 1, p. 1296; am. 1995, ch. 143, § 1, p. 606; am. 1996, ch. 59, § 1, p. 170; am. 1996, ch. 79, § 1, p. 252; am. 1996, ch. 112, § 1, p. 415; am. 1997, ch. 72, § 1, p. 148; am. 1997, ch. 218, § 1, p. 642; am. 1998, ch. 22, § 1, p. 128; am. 1999, ch. 198, § 1, p. 508; am. 1999, ch. 199, § 1, p. 519; am. 1999, ch. 329, § 39, p. 852; am. 2002, ch. 46, § 1, p. 101; am. 2004, ch. 232, § 1, p. 679; am. 2004, ch. 294, § 1, p. 818; am. 2007, ch. 44, § 1, p. 105; am. 2010, ch. 143, § 1, p. 300; am. 2010, ch. 182, § 1, p. 371; am. 2011, ch. 100, §§ 1, 2, 3, p. 240; am. 2012, ch. 31, § 1, p. 90; am. 2012, ch. 217, § 1, p. 590.

STATUTORY NOTES

Amendments.

This section was amended by two 1997 acts which appear to be compatible and have been compiled together.

The 1997 amendment, by ch. 72, in subsection (5B)(a)(ii)C. substituted "Worker's" for "Workers"; in subdivision (14)(B)(f) substituted a semicolon for a comma following

"rules of the board" and deleted a comma following "or" at the end of the subdivision; and substituted the present subsection (31) for one which read: "(31)(a) 'Salary' means the total salary or wages paid to a person who meets the definition of employee by an employer for personal services currently performed, including the cash value of all remuneration."

neration in any medium other than cash in the amount reported by the employer for income tax purposes, also including the amount of any voluntary reduction in salary agreed to by the member and employer where the reduction is used as an alternative form of remuneration to the member, but excluding contributions by employers to employee held medical savings accounts, as those accounts are defined in section 63-3022K Idaho Code.

"(b) Salary in excess of the compensation limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded for any person who becomes a member of the system on or after July 1, 1996. The system had no limitations on compensation in effect on July 1, 1993. The compensation limitations set forth in section 401(a)(17) of the Internal Revenue Code shall not apply for an 'eligible employee.' For purposes of this subsection, 'eligible employee' is an individual who was a member of the system before July 1, 1996."

The 1997 amendment, by ch. 218, in subsection (5B)(a)(ii)C. substituted "Worker's" for "Workers", in subdivision (14)(B)(f) substituted a semicolon for a comma following "board" and deleted a semicolon following "or" at the end of the subdivision, in subdivision (14)(B)(g) added "or county" following "city" in two places and in present subdivision (31)(C)(a) inserted a comma following "section 63-3022K."

This section was amended by three 1999 acts which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 198, added subsection (7)(A); in subsection (33), substituted the present second sentence for the former second sentence which read, "Service of fifteen (15) days or more during any calendar month shall be credited as one (1) month of service." and in the third sentence of subsection (33), substituted "Employment" for "Service".

The 1999 amendment, by ch. 199, rewrote subsection (36) which formerly read, "Vested retirement allowance" means the periodic payment becoming payable upon an inactive member's becoming eligible for vested retirement."

The 1999 amendment, by ch. 329, substituted "professional-technical" for "vocational-technical" in two places in subsection (14)(A)(e).

This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 232, rewrote subsection (23).

The 2004 amendment, by ch. 294, added subsection (14)(B)(h).

The 2007 amendment, by ch. 44, added "provided additional membership service may

be purchased as provided in section 59-1362, Idaho Code" in subsection (23)(b).

This section was amended by two 2010 acts which appear to be compatible and have been compiled together.

The 2010 amendment, by ch. 143, in paragraph (14)(B)(h), twice inserted "or irrigation district" and added "and irrigation positions."

The 2010 amendment, by ch. 182, added paragraph (14)(B)(g) and made related redesignations.

The 2011 amendment, by ch. 100, § 1, effective January 1, 2007, substituted "as a result of his death" for "due to being killed" in the introductory paragraph in subsection (23).

The 2011 amendment, by ch. 100, § 2, effective January 1, 2009, added paragraphs (14)(A)(d) and (31)(C)(c).

The 2011 amendment, by ch. 100, § 3, effective July 1, 2011, inserted "other than the United States" in paragraph (12)(a), and added "Provided further, if a member fails to again become an employee due to a disability retirement resulting from service in the armed forces of the United States, the member shall be entitled to military service through the date the disability allowance becomes payable" as the third sentence in the introductory paragraph in subsection (23).

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 31, added paragraph (31)(C)(d).

The 2012 amendment, by ch. 217, in paragraph (14)(h), inserted "cemetery district or mosquito abatement district" twice and deleted "and the growing season" following "affected by weather."

Federal References.

The United States Civil Service Retirement System Act, referred to in subsection (14)(B)(f), is the United States civil service retirement act, which is codified as 5 U.S.C.S. § 8331 et seq.

Section 401(a)(17) of the internal revenue code, referred to in subsection (31)(B), is codified as 26 U.S.C.S. § 401(a)(17).

Compiler's Notes.

The phrase "the effective date of this chapter" in subsection (12A) refers to the effective date of S.L. 1979, ch. 158, which was effective March 29, 1979.

The bracketed insertion in paragraph (14)(B)(f) was added by the compiler as section 102 of executive reorganization plan #2 of 1978 transferred the duties and functions of the civil service commission to the director of the office of personnel management, effective January 1, 1979.

Effective Dates.

Section 2 of S.L. 1972, ch. 245 declared an emergency. Approved March 23, 1972.

Section 2 of S.L. 1975, ch. 217 declared an emergency. Approved March 28, 1975.

Section 2 of S.L. 1996, ch. 59 declared an emergency and provided that the act should be in full force and effect on and after passage and approval retroactive to January 1, 1996. Approved March 1, 1996.

Section 2 of S.L. 2002, ch. 46 declared an emergency. Approved February 26, 2002.

Section 2 of S.L. 2004, ch. 232 declared an emergency. Approved March 23, 2004.

Section 4 of S.L. 2011, ch. 100 provided: “An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 2007. Section 2 of this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 2009. Section 3 of this act shall be in full force and effect on and after July 1, 2011.” Approved March 22, 2011.

Section 2 of S.L. 2012, ch. 217 declared an emergency. Approved April 3, 2012.

JUDICIAL DECISIONS

Classification Type.

Where the public employees were not actually engaged in “hazardous law enforcement duties” despite being given that classification, the legislature had the authority to classify them as general members rather than police

officer members and, prospectively, reduce the rate at which they earned retirement benefits. *McNichols v. Public Employee Retirement Sys.*, 114 Idaho 247, 755 P.2d 1285 (1988).

OPINIONS OF ATTORNEY GENERAL

Cafeteria plan benefits are included within “salary” as defined by subsection (31) of this section only to the extent an employee has a right to elect to receive cash benefits pursuant to the cafeteria plan; accordingly, an employee’s “salary” for retirement purposes, as well as the employee’s retirement benefits and contributions, will be the same whether the employee elects to receive cash or elects to receive alternative benefits with a corresponding reduction in cash received. OAG 86-12.

As nonprofit corporations, the association of Idaho cities and Idaho association of counties are private entities. However, the validity of these entities has been recognized by the legislature by their inclusion in the Idaho public employee retirement system. OAG 89-7.

Should legislation be adopted permitting a

public subdivision to voluntary withdrawal from PERSI (Public Employees Retirement System of Idaho), PERSI, while not having a fiduciary duty to challenge the legislation, would be charged with the responsibility of allowing political subdivisions to withdraw from the system and would, thus, have standing to bring a declaratory judgment action or to bring an original action in the supreme court seeking a judicial declaration of the validity of the statute before allowing any withdrawals; thus, by obtaining such a declaration prior to actually allowing employers to withdraw, PERSI could avoid the logistical problems that could be created if the statute were declared invalid after a number of employers had already withdrawn and employees brought an action seeking damages for PERSI’s breach of its fiduciary duty regarding employee’s benefits. OAG 96-1.

RESEARCH REFERENCES

A.L.R. — What constitutes “salary,” “wages,” “pay,” or the like, within pension law basing benefits thereon. 91 A.L.R.5th 225.

59-1302A. [Amended and Redesignated.]

STATUTORY NOTES

Compiler’s Notes.

Former § 59-1302A was amended and re-designated as § 59-1303 by § 3 of S.L. 1990, ch. 231.

59-1303. Additional definitions for police officer status. — (1) As

used in this chapter, each of the terms defined in this section shall have the meaning given in this section unless a different meaning is clearly required by the context.

(2) Police officer membership status for retirement purposes may be fixed only by law, or by order of the retirement board.

(3) Members holding or filling the following positions or offices are designated by law as police officer members for retirement purposes during the time of their appointment to that position or during their term of office:

(a)(i) The director and deputy director of the Idaho state police.

(ii) Commissioned personnel of the Idaho state police holding positions which involve active law enforcement services, for which current POST certification is required to continue in employment in the position, POST training coordinators, and Idaho state police training coordinators.

(iii) Brand inspectors and brand inspector supervisors.

(iv) Employees of the Idaho state police serving in positions of personnel management, accounting, data processing, clerical services and in like general classifications found in departments throughout state government and not within the scope of active law enforcement service are not eligible for police officer member status.

(b)(i) County sheriffs;

(ii) Deputy county sheriffs holding positions for which current POST certification is necessary to continue in employment in the position, and the principal duties of which are active law enforcement service, accountability for the safety and safekeeping of persons confined in a county confinement facility, or active participation in county law enforcement activities pertaining to crime prevention or reduction. Deputy sheriffs, even though POST certified or required to be POST certified, holding positions whose principal full-time duties are those of a telephone operator, dispatcher, clerk, stenographer, animal control officer, records specialist, or duties not within the scope of active law enforcement service are not eligible for police officer member status.

(c)(i) City police chiefs;

(ii) City police officers holding positions for which current POST certification is necessary to continue in employment in the position, and the principal duties of which are active law enforcement service or active participation in city law enforcement activities pertaining to crime prevention or reduction. Police officers, even though POST certified or required to be POST certified, holding positions whose principal full-time duties are those of a telephone operator, dispatcher, clerk, stenographer, animal control officer, records specialist, or duties not within the scope of active law enforcement service are not eligible for police officer member status.

(d) Employees of the department of fish and game serving in a conservation officer position for which current POST certification is necessary to continue in employment in that position and which position has as its primary accountability the enforcement of wildlife protection laws and regulations.

- (e)(i) The director of the department of correction, the deputy director for probation and parole, and wardens of institutions;
 - (ii) Employees of the department of correction accountable for the custody, safety, safekeeping or supervision of persons confined in a department confinement facility and whose work station is located within the confinement facility;
 - (iii) Probation and parole supervisors, probation and parole investigators, and probation and parole officers;
 - (iv) Correctional peace officer training instructors;
 - (v) Employees of the department of correction serving in positions of personnel management, accounting, data processing, clerical services and in like general classifications found in departments throughout state government and not within the scope of active law enforcement service are not eligible for police officer member status.
 - (f) Employees of the adjutant general and military division of the state where military membership is a condition of employment.
 - (g) Magistrates of the district court; justices of the supreme court, judges of the court of appeals, and district judges who have made an election under section 1-2011, Idaho Code; and court employees designated by court order to have primary responsibility for court security or transportation of prisoners.
 - (h) Employees whose primary function requires that they are certified by the Idaho department of health and welfare as an emergency medical technician-basic, an advanced emergency medical technician-ambulance, an emergency medical technician-intermediate, or an emergency medical technician-paramedic.
 - (i) Criminal investigators of the attorney general's office, and criminal investigators of a prosecuting attorney's office.
 - (j) The director of security and the criminal investigators of the Idaho state lottery.
- (4) A member may be designated by the retirement board as a police officer member for retirement purposes if the position held is one in which the principal duties involve hazardous law enforcement duties.
- (a) For purposes of this section, "hazardous law enforcement duties" means principal duties which:
- (i) Will reasonably expect to increase the probability of early superannuation;
 - (ii) Are associated with life-threatening risk or present a position of peril either to the member or to others, or which can place the public safety in jeopardy; and
 - (iii) Either compel others to observe the law, pertain to crime prevention, or pertain to crime reduction, including police, courts, prosecution, correction, or rehabilitation.
- (b) If continued employment in a position is conditioned on maintaining current POST certification, such condition shall be evidence to be considered that the employee is a police officer member for retirement purposes.
- (i) After July 1, 1999, a requirement for POST certification for classified state employees may be made only by the administrator of the

division of human resources pursuant to chapter 53, title 67, Idaho Code.

(c) Occasional assignments to hazardous law enforcement duties do not create a condition for designation as a police officer member for retirement purposes.

(5) Any employer or agency that believes that any employee, not specifically designated as a police officer by law, is incorrectly classified as a nonpolice officer member, may petition the retirement board for inclusion of that employee's position as one to be filled by a police officer member for retirement purposes. The petition shall be in writing and shall explain in detail the principal duties of the position and include written evidence which establishes that the criteria of subsection (4) are met. The board shall review the petition and evidence, together with such information and evidence as may be presented by the staff of the retirement system. The board may decide the matter based upon the information supplied, may request additional information, or may request an oral presentation before the board. The decision of the board shall be final, but a similar petition may be resubmitted after six (6) months.

(6) On and after July 1, 1985, no active member shall be classified as a police officer for retirement purposes unless the employer shall have certified to the board, on a form provided by the board, that such member is an employee whose primary position with the employer is one designated as such within the meaning of this chapter, and the board shall have accepted such certification. Acceptance by the board of an employer's certification shall in no way limit the board's right to review and reclassify the position for retirement purposes based upon an audit or other relevant information presented to the board.

(7) An active member classified as a police officer for retirement purposes whose position is reclassified to that of a general member for retirement purposes as a result of a determination that the position does not meet the requirements of this chapter for police officer status for retirement purposes shall become a general member but shall not lose retirement benefits earned and accrued prior to the reclassification. If that member continues to be employed in that same position until retired, that member then will be deemed to be a police officer member for the purposes of retirement eligibility.

History.

I.C., § 59-1302A, as added by 1985, ch. 84, § 2, p. 164; am. and redesign. 1990, ch. 231, § 3, p. 611; am. 1990, ch. 276, § 1, p. 777; am. 1990, ch. 360, § 1, p. 970; am. 1995, ch. 116,

§ 29, p. 386; am. 1998, ch. 126, § 5, p. 466; am. 1999, ch. 370, § 25, p. 976; am. 2000, ch. 469, § 130, p. 1450; am. 2005, ch. 91, § 1, p. 308.

STATUTORY NOTES

Cross References.

Adjutant general, § 46-111.
Administrator of division of human resources, § 67-5308.
Brand inspectors, § 25-1101 et seq.
Conservation officers, § 36-1301 et seq.

Director of department of correction, § 67-2406.
Director of lottery security, § 67-7410.
Director of state police, § 67-2901.
Peace officer standards and training council, § 19-5101 et seq.

Amendments.

This section was amended by three 1990 acts which appear to be compatible and have been compiled together.

The 1990 amendment, by ch. 231, § 3, amended the section by renumbering the section which had formerly been compiled as § 59-1302A, as § 59-1303.

The 1990 amendment, by ch. 276, § 1, in subdivision (3)(a) in paragraph (i) added “, deputy director” following “The director”, deleted a semicolon and added all of the paragraph following “police”; in paragraph (ii) substituted “personnel of the state police division, police services division and alcohol beverage control division” for “and uniformed Idaho state police officers” following “Commissioned”, added “which involve active law enforcement services,” following “holding posi-

tions”, and added “of law enforcement” preceding “training instructors” and substituted a period for a semicolon at the end of the paragraph.

The 1990 amendment, by ch. 360, § 1, added subdivision (3)(j).

Compiler's Notes.

This section was formerly compiled as § 59-1302A.

Former § 59-1303 was amended and redesignated as § 59-1331 by § 24 of S.L. 1990, ch. 231.

Effective Dates.

Section 2 of S.L. 1990, ch. 360 declared an emergency. Approved April 10, 1990.

Section 30 of S.L. 1995, ch. declared an emergency. Approved March 14, 1995.

JUDICIAL DECISIONS**General Members.**

Where the public employees were not actually engaged in “hazardous law enforcement duties” despite being given that classification, the legislature had the authority to classify them as general members rather than police

officer members and prospectively reduce the rate at which they earned retirement benefits. *McNichols v. Public Employee Retirement Sys.*, 114 Idaho 247, 755 P.2d 1285 (1988).

59-1303A. [Amended and Redesignated.]**STATUTORY NOTES****Compiler's Notes.**

Former § 59-1303A was amended and re-

designated as § 59-1332 by § 25 of S.L. 1990, ch. 231.

59-1304. Retirement board — Appointment. — (1) There is hereby created in the office of the governor a governing authority of the system to consist of a board of five (5) persons known as the retirement board. Each member of the board shall be appointed by the governor to serve a term of five (5) years. The governor shall designate one (1) member of the board to serve as chairman.

(2) Two (2) board members shall be appointed from among active members having at least ten (10) years of credited service.

(3) Three (3) board members shall be appointed from among Idaho citizens who are not members of the system except by reason of having served on the board.

(4) Members of the board shall be compensated as provided by section 59-509(h), Idaho Code. These allowances shall be paid from the administration account of the fund.

(5) A board member shall serve until his successor qualifies. Each board member shall be entitled to one (1) vote, and three (3) board members shall constitute a quorum. Three (3) votes shall be necessary for resolution or action by the board at any meeting except as otherwise provided in this chapter.

(6) The board shall hold regular meetings and shall hold special meetings

at such times and at such places as it deems necessary. All meetings of the board shall be open to the public. The board shall keep a record of all its proceedings.

History.

1963, ch. 349, Art. 8, § 1, p. 988; am. 1969, ch. 283, § 11, p. 856; am. 1974, ch. 22, § 45, p. 592; am. 1974, ch. 57, § 16, p. 1118; am. 1976,

ch. 355, § 1, p. 1170; am. 1980, ch. 247, § 78, p. 582; am. 1988, ch. 234, § 1, p. 462; am. and redesign. 1990, ch. 231, § 4, p. 611.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 59-1326.

Former § 59-1304 was amended and redesignated as § 59-1333 by § 26 of S.L. 1990, ch. 231.

Effective Dates.

Section 61 of S.L. 1974, ch. 22 provided that the act should take effect on and after July 1, 1974.

59-1305. Powers and duties of board — Indemnification. —

(1) The board shall have the power and duty, subject to the limitations of this chapter, of managing the system. It shall have the powers and privileges of a corporation, including the right to sue and be sued in its own name as such board. Members of the retirement board, retirement system staff and retirement system mortgage and investment committee members shall, jointly and individually, be provided a defense and indemnified against all claims, demands, judgments, costs, charges and expenses, including court costs and attorney's fees, and against all liability losses and damages of any nature whatsoever that arise out of and in the course and scope of their official duties and functions, but only if the defense and indemnity for such person's wrongful act or omission are not provided by chapter 9, title 6, Idaho Code, and the wrongful act or omission of the person was not intentional, willful or wanton misconduct, fraudulent, or a knowing violation of law. The board may, as a fiduciary of the trust, determine to provide a defense and indemnity hereunder. The board may, as a fiduciary of the trust, determine to refuse a defense, or disavow and refuse to pay any judgment against a board member, retirement system staff, or retirement system mortgage and investment committee member if it is determined that such person was not within the course and scope of his official duties and functions or his conduct was intentional misconduct, willful, wanton, fraudulent, or a knowing violation of the law. Any defense and indemnity provided under this section shall be an expense of the trust, and the board is authorized but not required to purchase insurance to protect against such risks notwithstanding any other provision of law. No contribution or indemnification, or reimbursement for legal fees and expenses related to such defense or indemnification, shall be sought from any person defended or indemnified under this section unless the court in which the underlying claim was brought finds that the act or omission of the person was outside the course and scope of his official duties and functions or was intentional, willful or wanton misconduct, fraudulent, or a knowing violation of law. Any action by the trust against a board member, retirement system staff, or mortgage and investment committee member, and any action by a person

against the trust for contribution, indemnification or necessary legal fees and expenses shall be tried to the court in the same civil lawsuit brought on the claim against the retirement board member, retirement system staff, or retirement system mortgage and investment committee member. The venue of all actions in which the board is a party shall be Ada county, Idaho.

(2) The board shall appoint an executive director to serve at its discretion. The executive director shall be the secretary to the board, bonded as is required by the board and shall perform such duties as assigned by the board. The executive director shall be authorized to designate a staff member as acting director or secretary in the director's absence.

(3) The board shall authorize the creation of whatever staff it deems necessary for sound and economical administration of the system. The executive director shall hire the persons for the staff who shall hold their respective positions subject to the rules of a merit system for state employees. The salaries and compensation of all persons employed for purposes of administering the system shall be fixed by the board and as otherwise provided by law.

(4) The board shall obtain all actuarial, audit, legal and medical services it deems appropriate for the system. It shall cause a competent actuary who is a member of the academy of actuaries and who is familiar with public systems of pensions to be retained on a consulting basis. The actuary shall be the technical advisor of the board on matters regarding the operation of the system. During the first year of operation of the system and at least once every four (4) years thereafter, the actuary shall make a general investigation of the suitability of the actuarial tables used by the system. The board shall adopt the actuarial tables and assumptions in use by the system and may change the same in its sole discretion at any time. The actuary shall make an annual valuation of the liabilities and reserves of the system, and an annual determination of the amount of contributions required from the employers under this chapter, and certify the results thereof to the board. The actuary shall also perform such other duties as may be assigned by the board. An independent financial audit shall be conducted annually or as frequently as otherwise determined by the board.

(5) The board shall establish the system's office or offices to be used for the meetings of the board and for the general purposes of the administrative personnel. The board shall provide for the installation of a complete and adequate system of accounts and records for administering this chapter. All books and records shall be kept in the system's offices.

(6) If the board determines that it has previously overpaid or underpaid benefits provided under this chapter or chapter 14, title 72, Idaho Code, it shall correct the prior error. In the event of prior underpayment, the board shall forthwith pay the amount of the underpayment together with regular interest thereon. In the event of prior overpayment, the board may offset future benefit payments by the amount of the prior overpayment together with regular interest thereon. Any such decision to offset future benefit payments shall be administratively and judicially reviewable as provided in section 59-1314, Idaho Code. Nothing herein contained shall be construed to limit the rights of a member or the board to pursue any other remedy provided by law.

History.

1963, ch. 349, Art. 8, § 2, p. 988; am. 1965, ch. 265, § 3, p. 682; am. 1969, ch. 283, § 12, p. 856; am. 1971, ch. 49, § 11, p. 105; am. 1985,

ch. 4, § 1, p. 8; am. and redesign. 1990, ch. 231, § 5, p. 611; am. 1991, ch. 61, § 2, p. 140; am. 1993, ch. 350, § 3, p. 1295; am. 2005, ch. 90, § 1, p. 307; am. 2006, ch. 268, § 1, p. 834.

STATUTORY NOTES**Amendments.**

The 2006 amendment, by ch. 268, rewrote the third sentence of subsection (1), which formerly read: "Members of the retirement board, retirement system staff and retirement system mortgage and investment committee members who shall be found to be fiduciaries of the fund, jointly and individually, shall be indemnified from all claims, demands, judgments, costs, charges and expenses, including court costs and attorney's fees, and against all liability losses and damages of any nature whatsoever that retirement board members, retirement system staff or retirement system mortgage and invest-

ment committee members shall or may at any time sustain by reason of any decision made in the scope or performance of their duties pursuant to the provisions of this section"; and added the fourth through eighth sentences.

Compiler's Notes.

This section was formerly compiled as § 59-1327.

Former § 59-1305 was amended and redesignated as § 59-1334 by § 27 of S.L. 1990, ch. 231.

For more on the American academy of actuaries, see <http://actuary.org>.

OPINIONS OF ATTORNEY GENERAL

Should legislation be adopted permitting a public subdivision to voluntary withdrawal from PERSI (Public Employees Retirement System of Idaho), PERSI, while not having a fiduciary duty to challenge the legislation, would be charged with the responsibility of allowing political subdivisions to withdraw from the system and would, thus, have standing to bring a declaratory judgment action or to bring an original action in the supreme court seeking a judicial declaration of the

validity of the statute before allowing any withdrawals; thus by obtaining such a declaration prior to actually allowing employers to withdraw, PERSI could avoid the logistical problems that could be created if the statute were declared invalid after a number of employers had already withdrawn and employees brought an action seeking damages for PERSI's breach of its fiduciary duty regarding employee's benefits. OAG 96-1.

59-1305A. [Amended and Redesignated.]**STATUTORY NOTES****Compiler's Notes.**

Former § 59-1305A was amended and re-

designated as § 59-1335 by § 28 of S.L. 1990, ch. 231.

59-1306. Conformity with federal tax code to maintain qualified plan tax status. — Chapter 13, title 59, and chapter 14, title 72, Idaho Code, shall be administered in a manner so as to comply with the requirements of 26 U.S.C. section 401(a) (8), (9), (16), (25) and (31). The public employees retirement system board shall promulgate rules and amend or repeal conflicting rules in order to assure compliance with the requirements of this section. This chapter shall be in full force and effect on and after January 1, 1989, and thereafter only so long as conformity to section 401(a) of the internal revenue code, 26 U.S.C., section 401(a) is required for public retirement systems. If not required, this provision will cease to have any force or effect.

History.

I.C., § 59-1311A, as added by 1989, ch. 185, § 2, p. 460; am. and redesign. 1990, ch. 231, § 6, p. 611; am. 1998, ch. 193, § 1, p. 697.

STATUTORY NOTES**Prior Laws.**

Former § 59-1306 was amended and redesignated as § 59-1308 by § 8 of S.L. 1990, ch. 231 which was subsequently repealed by S.L. 1992, ch. 220, § 2. A former § 59-1311A, which comprised I.C., § 59-1311A, as added by 1988, ch. 235, § 1, p. 463, was repealed by S.L. 1989, ch. 185, § 1.

Effective Dates.

Section 3 of S.L. 1989, ch. 185 declared an emergency and provided that the act would become effective retroactively to January 1, 1989. Approved March 29, 1989.

Section 3 of S.L. 1998, ch. 193 declared an emergency. Approved March 20, 1998.

Compiler's Notes.

This section was formerly compiled as § 59-1311A.

59-1307. Agreements with other retirement systems. — The board may enter into agreements with the boards or other authorities of other retirement systems operated by the state of Idaho or by political subdivisions to protect the retirement rights or benefits of employees who may alter their membership status by changing employment from one agency to another.

History.

1963, ch. 349, Art. 3, § 3, p. 988; am. and redesign. 1990, ch. 231, § 7, p. 611.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 59-1308.

Former § 59-1307 was amended and redesignated as § 59-1360 by § 48 of S.L. 1990, ch. 231.

59-1308. Supplemental benefit plan — Contributions and expenses of the supplemental benefit plan — Indemnification. —

(1) The state shall sponsor and the board shall administer one (1) or more supplemental benefit plans to be used for allocation of extraordinary gains as provided in section 59-1309, Idaho Code, and for voluntary contributions of active members. The supplemental plans may be established under the qualified requirements of section 401(a) of the Internal Revenue Service Code and with the qualified cash or deferred arrangements under section 401(k) of the Internal Revenue Service Code or any other tax-deferred plan permitted by law, as determined by the retirement board. The board is authorized to secure such qualified staff and consultants as it determines necessary to establish and administer such plans. Employee and employer contributions shall be permitted according to the provisions of these plans as established by the board. For purposes of this section "employee" shall mean a participant as defined in the supplemental benefit plan documents or board rules.

(2) The board is authorized, but not required, to establish separate trust funds to hold the assets of the supplemental benefit plans created under this section. The investment options available under supplemental benefit plans

shall be determined by the board, and may include, but are not limited to, investment in all or part of the public employee retirement fund and use of private vendor options.

(3) Supplemental benefit plans shall be available to all active members and shall be in addition to any other retirement or tax-deferred compensation system established by the employer. The board may provide educational opportunities related to supplemental benefit plans and retirement savings, as determined by the board.

(4) Accounts shall be established in supplemental benefit plans for all active members eligible for an extraordinary gains transfer under section 59-1309, Idaho Code. After the initial transfer of extraordinary gains, any active member may make additional voluntary contributions to his/her account, subject to applicable limitations, by authorizing his/her employer to contribute an amount by payroll deduction to the supplemental benefit plan in lieu of receiving such amount as salary. The amount of such contributions shall be subject to any limitations established by the board, state or federal law. The employer shall provide coordination of contributions between multiple plans to assure that contribution limits are not exceeded. Should aggregate contributions to multiple plans exceed applicable limits, excess contributions shall be deemed to apply exclusively to plans not created by this chapter. In the event a preexisting plan is used as a supplemental plan, voluntary contributions may continue to be made to that plan despite the absence of extraordinary gains transfers.

(5) For purposes of this section the employer is authorized to make such deductions from salary for any employee who has authorized such deductions in writing. The employer shall forward all contributions under this section to the board by the fifth working day after each payroll, in addition to reports as directed by the board. Any costs incurred by the board, whether direct or indirect, due to an employer's failure to properly withhold, transfer, limit and report contributions, shall be the responsibility of the employer and shall be immediately due and payable upon notice from the board. This includes, but is not limited to, costs associated with plan corrections. Such costs shall be treated as delinquent contributions under section 59-1325, Idaho Code.

(6) The board may enter into agreements with employers or require participation to implement the supplemental benefit plans and the board may designate administrative agents to execute all necessary agreements pertaining to the supplemental benefit plans.

(7) All contributions received from participants in the supplemental benefit plans shall be deposited with a trustee designated by the board. All such funds are hereby perpetually appropriated to the board, shall not be included in the department's budget, and may be invested or used to pay for investment and administrative expenses of the supplemental benefit plans. Inactive members may be required to transfer supplemental benefit plan account balances as determined by the board.

(8) The board may establish rules to implement and administer supplemental benefit plans. Costs of administration shall be appropriated by the legislature and may be paid from the interest earnings of the funds accrued

as a result of the deposits or as an assessment against each account, to be decided by the board. Investment related expenses are exempt from appropriation.

(9) Contributions and investment earnings under the supplemental benefit plans shall be exempt from federal and state income taxes until the ultimate distribution of such contributions. Distributions of funds held in supplemental benefit plan accounts are subject to federal law limitations. The board may provide for retirement disbursement options other than lump sum payments.

(10) All additional contributions made by the employee under this section shall continue to be included as regular compensation for the purpose of computing the employer and employee retirement contributions and pension benefits earned by an employee under this chapter, but such sum shall not be included in the computation of any income taxes withheld on behalf of any employee. However, funds accrued in a supplemental benefit plan account shall not be considered in determining any other benefits under this chapter.

(11) The provisions of sections 59-1316 and 59-1317(1), (2) and (5), Idaho Code, shall also apply to the supplemental benefit plans created under this section. Should a court order that an assignment be made to a participant's spouse or former spouse of all or part of an account created under this section, the assignment shall be separate and distinct from any approved domestic retirement order required by section 59-1317(4), Idaho Code. Requirements for assignments of supplemental accounts may be set forth in rule or other plan documents.

(12) Members of the retirement board or retirement system staff shall, jointly or individually, be provided a defense and indemnified against all claims, demands, judgments, costs, charges and expenses, including court costs and attorney's fees, and against all liability losses and damages of any nature whatsoever arising out of and in the course and scope of their official duties and functions in administering any plans created pursuant to the provisions of this section to the same extent as provided in section 59-1305(1), Idaho Code. The venue of all actions in which the retirement board or retirement staff is a party shall be in Ada county, Idaho.

History.
I.C., § 59-1308, as added by 1995, ch. 120,
§ 1, p. 520; am. 2000, ch. 208, § 1, p. 528; am.

2001, ch. 89, § 1, p. 227; am. 2006, ch. 268,
§ 2, p. 834.

STATUTORY NOTES

Prior Laws.
Former § 59-1308, which comprised 1963,
ch. 349, Art. 3, § 1, p. 988; am. 1967, ch. 398,
§ 3, p. 1184; am. 1971, ch. 49, § 3, p. 105; am.
and redesign. 1990, ch. 231, § 8, p. 611, was
repealed by S.L. 1992, ch. 220, § 2.

Amendments.
The 2006 amendment, by ch. 268, in the
first sentence of subsection (12), inserted
“provided a defense,” and substituted the lan-

guage beginning “arising out of and in the
course and scope of their official duties” for
“that the retirement board or retirement sys-
tem staff shall or may at any time sustain by
reason of any decision made in the scope or
performance of their duties pursuant to the
provisions of this section, except as may re-
sult from their willful and intentional malfea-
sance.”

Federal References.
Section 401 of the Internal Revenue Service

Code, referred to in subsection (1), is codified as 26 U.S.C.S § 401.

Compiler's Notes.

Another former § 59-1308 was amended and redesignated as § 59-1307 by S.L. 1990, ch. 231, § 7, p. 611.

Effective Dates.

Section 2 of S.L. 1995, ch. 120 declared an emergency. Approved March 14, 1995.

Section 3 of S.L. 2000, ch. 208 provided: "An emergency existing therefor, which emer-

gency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval; provided however, that the retirement board may delay implementation of any or all of these provisions to obtain assurances concerning federal income tax treatment of contributions and distributions or to complete system changes necessary to accurate and complete implementation of this act." Approved April 5, 2000.

Section 2 of S.L. 2001, ch. 89 declared an emergency. Approved March 22, 2001.

59-1309. Allocation of extraordinary gains. — (1) At the close of each fiscal year, the board shall determine whether the fund has experienced extraordinary gains. If extraordinary gains exist the board may allocate all or part of them as set forth in this section. In determining whether extraordinary gains should be allocated, the board shall exercise its fiduciary discretion.

(2) Extraordinary gains are defined as the excess, if any, at the close of the fiscal year of plan assets over the plan's accrued actuarially determined liabilities plus a sum necessary to absorb a one (1) standard deviation market event without increasing contribution rates, as determined by the board.

(3) If the board determines that extraordinary gains should be allocated, the gains shall be allocated to retirees, to active members, and to employers in such proportion as determined by the board. The board shall determine no later than the first day of December following the close of the fiscal year the amount of extraordinary gains to be allocated, if any.

(4) Retirees shall receive their allocation in the form of a one-time payment made in addition to their regular monthly benefit payments. For purposes of this section, "retirees" include retired members, members receiving a disability retirement allowance, contingent annuitants, and surviving spouses who elected the annuity option under section 59-1361(5), Idaho Code. To participate in the retiree allocation, a retiree must be receiving a regular monthly allowance at the close of the fiscal year and on the date of distribution. The retiree allocation shall be distributed proportionally based on the final monthly retirement allowance of the fiscal year divided by the total of all monthly retirement allowances paid for the same month. The date of distribution shall be no later than the first day of February following the close of the fiscal year.

(5) Active members shall receive their allocation as a transfer of funds to a supplemental retirement account established by the board. Funds transferred to or held in supplemental retirement accounts shall be accounted for separately and shall not be considered in determining any other benefits under this chapter. To participate in the active member allocation, the member must have been an active member on the last day of the fiscal year and have accrued at least twelve (12) months of service on that date. Any member who has withdrawn contributions from the fund prior to the date of transfer is not eligible to receive a transfer under this section. The active member allocation shall be distributed proportionally based on accumulated

contributions at the close of the fiscal year divided by the total accumulated contributions of all active members at the close of the fiscal year, not to exceed the amount that would result by applying the limits imposed by rule or by section 415(c)(1) of the Internal Revenue Code to compensation earned during the fiscal year. The transfer of funds shall occur in the following calendar year but shall be subject to reduction and forfeiture, based on the application of limits imposed by rule or by section 415 of the Internal Revenue Code for that year.

(6) Employers shall receive their allocation as a credit against future contributions required by section 59-1325, Idaho Code. Credits are not available to any employer who has withdrawn from participation in the fund prior to the transfer date. The employer allocation shall be credited proportionally based on employer contribution liability accrued during the fiscal year as provided in section 59-1322, Idaho Code, divided by the total employer contribution liability for the fiscal year. The credits shall be established no later than the first day of February following the close of the fiscal year. The credits shall be applied thereafter in the same manner as provided in section 59-1325, Idaho Code, until exhausted. If, after twelve (12) months of remittances, an employer's credits have not been exhausted, and the employer has not withdrawn from participation in the fund, the value of the remaining credits shall carry over to the next year, together with an interest payment equal to regular interest on the remaining credits.

History.

I.C., § 59-1309, as added by 2000, ch. 208,
§ 2, p. 528.

STATUTORY NOTES**Prior Laws.**

Former § 59-1309, which comprised I.C., § 59-1309 as added by 1992, ch. 342, § 6, p. 1037, was repealed by S.L. 1994, ch. 276, § 2, effective July 1, 1994.

Federal References.

Section 415 of the Internal Revenue Code, referred to in subsection (5), is compiled as 26 U.S.C.S. § 415.

Effective Dates.

Section 3 of S.L. 2000, ch. 208 provided: "An

emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval; provided however, that the retirement board may delay implementation of any or all of these provisions to obtain assurances concerning federal income tax treatment of contributions and distributions or to complete system changes necessary to accurate and complete implementation of this act." Approved April 5, 2000.

59-1309A. [Amended and Redesignated.]**STATUTORY NOTES****Compiler's Notes.**

Former § 59-1309A was amended and re-

designated as § 59-1326 by § 22 of S.L. 1990, ch. 231.

59-1310. Admissibility in evidence of photoreproduced copies of records or documents maintained by the system — Destroying the original. — Copies of records or documents maintained on microfilm, microfiche, computer imagery or other photoreproductive material of archi-

val quality by the retirement system shall be as admissible in evidence as the original itself in any legal, judicial or administrative proceeding, or action, provided the custodian of records of the retirement system certifies on such copies offered into evidence that the retirement system is not in possession of the original and that the copy is a true and correct representation of the original. The original may be destroyed by the retirement system once the original is microfilmed, microfiched, digitally imaged or copied by other photoreproduction of archival quality.

History.

I.C., § 59-1310, as added by 1996, ch. 79,
§ 2, p. 252; am. 1999, ch. 198, § 2, p. 508.

59-1310A. Retirement incentive plan. [Repealed.]

STATUTORY NOTES

Prior Laws.

Another former § 59-1310A, which comprised I.C., § 59-1310A, as added by 1965, ch. 265, § 2, was repealed by S.L. 1986, ch. 147, § 3.

Compiler's Notes.

This section, which comprised I.C., § 59-1310A, as added by 1987, ch. 346, § 2, p. 735; am. 1988, ch. 274, § 1, p. 904, was repealed by S.L. 1990, ch. 231, § 23.

59-1310B. Conversion of service retirement or early retirement or vested retirement allowances into optional retirement allowances — Form of optional retirement. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 59-

1310B as added by 1976, ch. 97, § 4, p. 403, was repealed by S.L. 1986, ch. 147, § 3.

59-1311. Public employee retirement fund created — Administration — Payment of benefits — Perpetual appropriation. — (1) There is hereby established in the state treasury a special fund, the "Public Employee Retirement Fund," which shall be separate and apart from all public moneys or funds of this state, and shall be administered under the direction of the board exclusively for the purposes of this chapter. The state treasurer shall maintain within the fund a clearing account, a portfolio investment expense account and an administration account.

(2) All contributions received from employers by the board on their account and on account of members shall be deposited with a funding agent designated by the board. All such funds are hereby perpetually appropriated to the board, and shall not be included in the department's administration account budget and shall be invested or used to pay for investment related expenses.

(3) As needed to pay current obligations, the board shall transfer funds from the funding agent to the state treasurer's office for deposit into the administration account. All funds deposited in the administration account

shall be available to the board for the payment of administrative expenses only to the extent so appropriated by the legislature.

(4) As required by the board, the funding agent shall transfer funds to the state treasurer's office for deposit into the portfolio investment expense account for payment of investment expenses. The funds deposited in the portfolio investment expense account shall be used for payment of investments and investment related expenses. Such expenses shall include but not be limited to:

- (a) Reporting services;
- (b) Investment advisory services;
- (c) Funding agent fees and money management fees; and
- (d) Investment staff expenses including hiring of investment management personnel.

Investment management personnel shall be exempt from the provisions of chapter 53, title 67 and section 67-3519, Idaho Code, and shall be hired by and serve at the pleasure of the board. All expenses of the portfolio investment expense account shall be reported on a quarterly basis to the legislature and to the division of financial management in the office of the governor.

(5) As required by the board, the funding agent shall transfer funds to the state treasurer's office for deposit into the clearing account. All benefits for members shall be payable directly from the clearing account or by the funding agent as they come due. If the amount of such benefits payable at any time exceeds the amount in the clearing account, the payment of all or part of such benefits may be postponed until the clearing account becomes adequate to meet all such payments, or the board may require a refund from the funding agent sufficient to meet all such payments.

(6) Moneys representing member entitlements which remain unclaimed after reasonable attempts to effect payment shall remain in the retirement fund available for payment to the member or other established rightful payee.

History.

1963, ch. 349, Art. 9, § 2, p. 988; am. 1980, ch. 51, § 2, p. 105; am. 1985, ch. 168, § 5, p. 444; am. 1989, ch. 186, § 1, p. 461; am. and

redesig. 1990, ch. 231, § 9, p. 611; am. 1992, ch. 220, § 3, p. 658; am. 1996, ch. 79, § 3, p. 252.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.
State treasurer, § 67-1201 et seq.

ignated as § 59-1344 by § 32 of S.L. 1990, ch. 231.

Compiler's Notes.

This section was formerly compiled as § 59-1331.
Former § 59-1311 was amended and redes-

Effective Dates.

Section 3 of S.L. 1980, ch. 51 provided that the act should take effect on and after July 1, 1980.

Section 2 of S.L. 1989, ch. 186 declared an emergency. Approved March 29, 1989.

59-1311A. [Amended and Redesignated.]**STATUTORY NOTES****Compiler's Notes.**

Former § 59-1311A was amended and re-

designated as § 59-1306 by § 6 of S.L. 1990, ch. 231.

59-1312. Selection of funding agent(s) — Investment of assets — Tax exemption. — (1) The board shall select the funding agent(s) and establish a medium for funding, which may be a self-administration pension trust fund or a group annuity contract, or combination thereof. The contract shall authorize the funding agent(s) to hold and, subject to the provisions of subsections (2) and (3) of this section, to invest moneys for the system and to provide the retirement benefits and death benefits for retired members granted by this chapter.

(2) The board is authorized to select investment managers registered with the Securities and Exchange Commission to invest, reinvest and otherwise manage, subject to the restrictions outlined in subsection (3) of this section, such portions of the assets of the fund as are assigned by the board and are held by a funding agent(s) designated by the board.

(3) The funding agent(s) and investment managers, in acquiring, investing, reinvesting, exchanging, retaining, selling and managing the moneys and properties of the system, shall be governed by the Uniform Prudent Investor Act, chapter 5, title 68, Idaho Code; provided, however, that the board is hereby authorized and empowered, in its sole discretion, to limit, control and designate the types, kinds and amounts of such investments. The funding agent(s) will not be required to segregate moneys applicable to individual employees or employers, but shall only be responsible for the aggregate of such moneys as are received by it.

(4) All contributions paid to the funding agent(s) shall be construed as being exempt from premium taxes payable pursuant to section 41-402, Idaho Code.

History.

1963, ch. 349, Art. 8, § 3, p. 988; am. 1965, ch. 265, § 4, p. 682; am. 1986, ch. 147, § 5, p.

409; am. and redesign. 1990, ch. 231, § 10, p. 611; am. 1997, ch. 14, § 5, p. 14.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 59-1328.

Former § 59-1312 was amended and redesignated as § 59-1349 by § 37 of S.L. 1990, ch. 231 and was later repealed by S.L. 1999, ch. 199, § 8, effective July 1, 1999.

The letter "s" enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 5 of S.L. 1965, ch. 265 declared an emergency. Approved March 29, 1965.

59-1313. Trust agreement — Amended to comply with this chapter. — The board may amend its trust agreement with the funding agent to comply with the requirements of this chapter.

History.

1967, ch. 115, § 9, p. 222; am. and redesign.
1990, ch. 231, § 11, p. 611.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 59-1344.

Former § 59-1313 was amended and redesignated as § 59-1354 by § 42 of S.L. 1990, ch. 231.

59-1314. Rules — Procedures for hearings prior to appeals — Appeals. — (1) Subject to other provisions of this chapter and pursuant to the policy and standards set out in section 59-1301, Idaho Code, the board shall have the power and authority to adopt, amend or rescind such rules and administrative policies as may be necessary for the proper administration of this chapter.

(2) A final decision of the board shall be served by first class and certified mail, postage paid, on all interested parties. Any person aggrieved by any otherwise final decision or inaction of the board must, before he appeals to the courts, file with the executive director of the board by mail or personally, within ninety (90) days after the service date of the final decision on the aggrieved party, a notice for a hearing before the board. The notice of hearing shall set forth the grounds of appeal to the board.

(3) A hearing shall be held before the board in Ada County, Idaho, at a time and place designated by the board or may be undertaken or held by or before any member(s) thereof or any hearing officer appointed by the board for that purpose. The proceedings before the board shall be governed by the provisions of chapter 52, title 67, Idaho Code. Members of the board or the hearing officer shall have power to administer oaths, to preserve and enforce order during such hearings, to issue subpoenas for and to compel the attendance and testimony of witnesses or the production of books, papers, documents and other evidence and to examine witnesses.

(4) Every finding, order or award made by any member or hearing officer pursuant to such hearing, as confirmed or modified by the board, and ordered filed in its office, shall be deemed to be the finding, order or award of the board. The recommended order of the hearing officer shall be considered by the board and the decision and order of the majority of the members shall be the order of the board. Every such order rendered by the board shall be in writing and a copy thereof shall be mailed by first class and certified mail to each party to the appeal and to his attorney of record.

(5) If any person in proceedings herein disobeys or resists any lawful order or process or misbehaves during a hearing, or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper, document or other evidence, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the board shall certify the facts to the district court having jurisdiction, and the court shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for

contempt committed before the court, or commit such person upon the same conditions as if doing of the forbidden act had occurred with reference to the proceedings, or in the presence of the court.

(6) Any party aggrieved by a final order of the board may seek judicial review thereof pursuant to the provisions of chapter 52, title 67, Idaho Code. The decision or judgment of the district court shall be subject to appeal to the Supreme Court in the same manner and by the same procedure as appeals are taken and perfected to the court in civil actions at law.

History.

1963, ch. 349, Art. 8, § 4, p. 988; am. 1971, ch. 49, § 12, p. 105; am. 1984, ch. 132, § 6, p. 308; am. and redesisg. 1990, ch. 231, § 12, p.

611; am. 1991, ch. 61, § 3, p. 140; am. 1993, ch. 216, § 96, p. 587; am. 1996, ch. 247, § 1, p. 781.

STATUTORY NOTES

Cross References.

Contempt, § 7-601 et seq.

Former § 59-1314 was amended and redesignated as § 59-1359 by § 47 of S.L. 1990, ch. 231.

Compiler's Notes.

This section was formerly compiled as § 59-1329.

The letter "s" enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

Cited in: Jackson v. Minidoka Irrigation Dist., 98 Idaho 330, 563 P.2d 54 (1977).

59-1315. Amount, terms and conditions of revised benefits are to be prospective only unless otherwise provided. — As the amount, terms and conditions of benefits may be revised from time to time the application of such revisions shall be prospective only and not retrospective or retroactive unless otherwise provided by statute. Accordingly, unless otherwise provided, a member's benefits are determined based upon the terms of the plan on the date of the member's last contribution as an active member.

History.

I.C., § 59-1335, as added by 1971, ch. 49,

§ 15, p. 105; am. and redesisg. 1990, ch. 231, § 13, p. 611; am. 2005, ch. 89, § 1, p. 306.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1335.

Former § 59-1315 was amended and redesignated as § 59-1343 by § 31 of S.L. 1990, ch. 231.

Effective Dates.

Section 16 of S.L. 1971, ch. 49 provided that the act should take effect on and after July 1, 1971.

59-1316. Member's retirement records confidential. — (1) Each member shall furnish the board with such information as the board shall deem necessary for the proper operation of the system. As provided in section 9-340C, Idaho Code, information contained in the retirement system mortgage portfolio loan documents and in each member's retirement system

records is confidential and may not be divulged except as ordered by a court; or except as may be required by the employer member or by the retirement board and its staff in order to carry into effect the purposes of this chapter.

(2) A member may by his written authorization release specific information from his own retirement system records to a stated designee. If the member is deceased, the member's contingent annuitant or beneficiary may, by written authorization, release specific information from the member's retirement system records to a stated designee.

(3) The retirement system may disclose the identity of a deceased member's beneficiary to the member's spouse, children, and to the court-appointed administrator of the member's estate.

(4) Should a court order direct distribution or partial distribution of a member's benefit as defined in either chapter 13, title 59, Idaho Code, or chapter 14, title 72, Idaho Code, to the member's spouse or former spouse, the system may release to the spouse, former spouse, or the court issuing the order, information pertaining to the division or segregation of the member's accounts or benefit. This information includes account balances, service accumulations, and related information and histories, but does not include current addresses and phone numbers. The system may release the same information to a member's current spouse at any time, regardless of whether a court has ordered a distribution or division of the member's account.

History.

I.C., § 59-1325A, as added by 1988, ch. 275, § 1, p. 906; am. 1990, ch. 213, § 90, p. 480; am. and redesisg. 1990, ch. 231, § 14, p. 611;

am. 1990, ch. 249, § 7, p. 702; am. 1992, ch. 220, § 4, p. 658; am. 1996, ch. 103, § 1, p. 405; am. 2000, ch. 13, § 2, p. 26; am. 2001, ch. 90, § 1, p. 229.

STATUTORY NOTES

Prior Laws.

Former § 59-1316, which comprised 1963, ch. 349, Art. 5, § 6, p. 988; am. 1967, ch. 398, § 5, p. 1184; am. 1969, ch. 283, § 5, p. 856; am. 1971, ch. 49, § 7, p. 105; am. 1976, ch. 97, § 6, p. 403; am. 1979, ch. 158, § 4, p. 478, was repealed by S.L. 1981, ch. 10, § 1.

Compiler's Notes.

This section was formerly compiled as § 59-1325A.

Section 12 of S.L. 1992, ch. 220 read: "The amendments to Section 59-1316, Idaho Code, made by Section 4 of this act shall be in full force and effect on and after July 1, 1992, and shall be in addition to and shall not negate the amendments to Section 59-1316, Idaho Code, made by Section 90, Ch. 213, Laws of

1990, which shall be in full force and effect on and after July 1, 1993." Therefore, the present first sentence as added by the amendment of § 4 of S.L. 1992, ch. 220 was added to this section.

Effective Dates.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

Section 2 of S.L. 1996, ch. 103, declared an emergency. Approved March 6, 1996.

Section 6 of S.L. 2000, ch. 13 provided that the act shall be in full force and effect on and after July 1, 2000.

59-1317. Rights to benefits inalienable. — (1) The right of a person to any benefits under this chapter and the money in any fund created by this chapter shall not be assignable or subject to execution, garnishment or attachment or to the operation of any bankruptcy or insolvency law.

(2) Notwithstanding subsection (1) of this section, the benefits of a

member or alternate payee shall be subject to garnishment, execution, or wage withholding under chapter 12, title 7, Idaho Code, for the enforcement of an order for the support of a minor child.

(3) Notwithstanding subsection (1) of this section, prior to July 1, 1998, should a court order direct distribution or partial distribution of a member benefit defined in either chapter 13, title 59, Idaho Code, or chapter 14, title 72, Idaho Code, be made to the member's spouse or former spouse, that member's full benefit entitlement will be forwarded to the court for distribution.

(4) Notwithstanding subsection (1) of this section, on or after July 1, 1998, should a court order direct distribution or partial distribution of a member's benefit defined in either chapter 13, title 59, Idaho Code, or chapter 14, title 72, Idaho Code, be made to the member's spouse or former spouse, the court order must be an approved domestic retirement order and shall comply with the requirements of sections 59-1319 and 59-1320, Idaho Code.

(5) Notwithstanding subsection (1) of this section, should a court order establish a trust pursuant to section 15-5-409, Idaho Code, the full benefit entitlement will be forwarded to the trustee, naming the trustee as payee.

History.

1963, ch. 349, Art. 7, § 1, p. 988; am. 1985, ch. 168, § 4, p. 444; am. 1986, ch. 221, § 5, p.

584; am. and redesign. 1990, ch. 231, § 15, p. 611; am. 1996, ch. 102, § 1, p. 404; am. 1998, ch. 22, § 2, p. 128.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1325.

Former § 59-1317 was amended and redesignated as § 59-1351 by § 39 of S.L. 1990, ch. 231.

59-1318. Rights in assets of system limited. — No particular person, group of persons or entity shall have any right in any specific portion of the assets of the system other than such undivided interest in the whole of such assets as is specified in this chapter.

History.

1963, ch. 349, Art. 9, § 4, p. 988; am. and redesign. 1990, ch. 231, § 16, p. 611.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1333.

Former § 59-1318 was amended and redesignated as § 59-1356 by § 44 of S.L. 1990, ch. 231.

Section 1 of Art. 12 of S.L. 1963, ch. 349, read: "The provisions of this act shall be severable and if any phrase, clause, sentence, or provision of this act is declared to be unconstitutional or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of this act

and the applicability thereof to the state, agency, person or circumstance shall, with respect to all severable matters, not be affected thereby. It is the legislative intent that the provisions of this act be reasonably and liberally construed."

Effective Dates.

Section 1 of Art. 11 of S.L. 1963, ch. 349, read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect immediately upon its passage and approval; provided, however, that membership in the system and

contributions required pursuant to this act shall be commenced on the date of establishment." Approved March 29, 1963.

59-1319. Approved domestic retirement orders — Requirements.

— (1) An approved domestic retirement order must meet the following requirements:

- (a) Clearly specify that such order applies to the retirement system;
- (b) Clearly specify the effective date of the order, which is the date of divorce or the date of an earlier property settlement agreement incorporated into the initial divorce decree, the name, account number, date of birth, sex, and last known mailing address of the member and the name, date of birth, sex, and last known mailing address of the alternate payee covered by the order;
- (c) Provide for a proportional reduction of the amount awarded to an alternate payee in the event that benefits available to the member are reduced by law;
- (d) For benefits as defined in chapter 13, title 59, Idaho Code, for members who are not retired members: (i) clearly specify the amount or percentage of the member's taxed and tax deferred accumulated contributions which are to be credited to the segregated account or the manner in which such amount or percentage is to be determined, and (ii) clearly specify the member's months of credited service, either by specific amount or percentage, to be transferred by the retirement system to the segregated account or the manner in which such amount or percentage is to be determined. The months of credited service transferred to the alternate payee shall be proportional to the accumulated contributions attributable to such months of credited service. Months of credited service transferred shall be whole months and not partial months;
- (e) For benefits as defined in chapter 13, title 59, Idaho Code, for retired members, clearly specify the amount or percentage of the member's benefit being paid that the retirement system is to pay to the alternate payee, or the manner in which such amount or percentage is to be determined, and if the alternate payee is the member's named contingent annuitant and is waiving all survivor benefits as the named contingent annuitant, clearly specify such waiver pursuant to this subsection; and
- (f) For benefits as defined in chapter 14, title 72, Idaho Code, clearly specify the amount or percentage of the member's benefit paid at the time of retirement which the retirement system is to pay to the alternate payee, or the manner in which such percentage is to be determined.

(2) An approved domestic retirement order cannot:

- (a) Require the retirement system to provide any type or form of benefit or any option not otherwise provided under the retirement system;
- (b) Require the retirement system to provide increased benefits determined on the basis of actuarial value;
- (c) Require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be an approved domestic retirement order or a court order entered prior to July 1, 1998;

(d) Require any action on the part of the retirement system contrary to its governing statutes or rules other than the direct payment of the benefit awarded to an alternate payee;

(e) Segregate or attempt to segregate the right to reinstate previous credited service as provided in section 59-1360, Idaho Code, unless such credited service has been fully reinstated by full payment of contributions and interest as provided in section 59-1360, Idaho Code;

(f) Purport to award to the alternate payee any future benefit increases that are provided or required by the legislature, except as provided in subsections (6) and (7) of section 59-1320, Idaho Code; or

(g) Require the payment of benefits to an alternate payee before the date on which the alternate payee attains the earliest retirement age under the retirement system. However, an alternate payee may take a lump sum distribution any time prior to receiving a lifetime annuity payment.

(3) In no event shall an approved domestic retirement order cause the retirement system to pay any benefit or any amount of benefit greater than would have been paid had the member's account not been segregated.

(4) A party to any domestic retirement order issued prior to July 1, 1998, which distributes benefits defined in either chapter 13, title 59, Idaho Code, or chapter 14, title 72, Idaho Code, may move the court to modify such order to comply with the requirements of this section and section 59-1320, Idaho Code, provided that modifications be limited to issues related to the distribution of benefits defined in either chapter 13, title 59, Idaho Code, or chapter 14, title 72, Idaho Code, and that the value of the distribution is not materially changed.

(5) The alternate payee's social security number shall be provided to the board before a domestic retirement order is approved under section 59-1320, Idaho Code, in a manner prescribed by the board.

History.

I.C., § 59-1319, as added by 1998, ch. 22, § 3, p. 128; am. 1999, ch. 198, § 3, p. 508; am.

2000, ch. 13, § 3, p. 26; am. 2004, ch. 212, § 1, p. 638; am. 2004, ch. 328, § 1, p. 979.

STATUTORY NOTES

Compiler's Notes.

Former § 59-1319 was amended and redesignated as § 59-1342 by § 30 of S.L. 1990, ch. 231.

Amendments.

This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 212, substituted "account number" for "social security number" preceding the first instance of "date of birth" in subsection (1)(b) and deleted "so-

cial security number" preceding the second instance of "date of birth" in subsection (1)(b) and added subsection (5).

The 2004 amendment, by ch. 328, added "and if the alternate payee is the member's named contingent annuitant and is waiving all survivor benefits as the named contingent annuitant, clearly specify such waiver pursuant to this subsection" in subsection (1)(e).

Effective Dates.

Section 6 of S.L. 2000, ch. 13 provided that the act shall be in full force and effect on and after July 1, 2000.

59-1319A. [Amended and Redesignated.]**STATUTORY NOTES****Prior Laws.**

Another former § 59-1319A, which comprised 1974, ch. 57, § 11, p. 1118; am. 1976, ch. 97, § 8, p. 403, was repealed by S.L. 1979, ch. 26, § 1, effective January 1, 1980.

Compiler's Notes.

Former § 59-1319A was amended and redesignated as § 59-1355 by § 43 of S.L. 1990, ch. 231.

59-1320. Approved domestic retirement orders — Application and effect. — (1) The executive director of the public employee retirement system or his designee upon receipt of a copy of a domestic retirement order, shall determine whether the order is an approved domestic retirement order and shall notify the member and the alternate payee of the determination within ninety (90) days. Orders shall be applied prospectively only from the first day of the month following the order being determined to be an approved domestic retirement order. The retirement system shall then pay benefits or establish a segregated account in accordance with the order. When established, the segregated account will consist of accumulated contributions identified in the approved domestic retirement order together with accrued interest on that amount from the effective date to the date of segregation.

(2) If the order is determined not to be an approved domestic retirement order, or if no determination is issued within ninety (90) days, the member or the alternate payee named in the order may move the court which issued the order to amend the order so that it will be approved. The court that issued the order or which would otherwise have jurisdiction over the matter has jurisdiction to amend the order so that it will be qualified even though all other matters incident to the action or proceeding have been fully and finally adjudicated.

(3) The executive director of the retirement system to which a domestic retirement order is submitted or his designee has exclusive authority to determine whether a domestic retirement order is an approved domestic retirement order. If it is determined that a domestic retirement order does not meet the requirements for an approved domestic retirement order, both the issuing court and the parties to the order shall be notified so action may be taken to amend the order.

(4) Because an approved domestic retirement order cannot cause the retirement system to pay any benefit or any amount of benefit greater than would have been paid had the member's account not been segregated, disputes related to benefits paid under an approved domestic retirement order shall be resolved between the parties to the order by the court issuing that order. The retirement system shall not be made a party to the action. Any cost, including attorney's fees, incurred by the retirement system as a result of such actions shall be distributed by the court among the parties and included in any amended order issued.

(5) Unless the approved domestic retirement order specifies differently, if the member has a right to a vested benefit as of the effective date of the order, then both the member and the alternate payee shall have a right to

a vested benefit after the transfer of months of service even if the member or the alternate payee has less than sixty (60) months of membership service.

(6) For benefits under chapter 13, title 59, Idaho Code, for members other than retired members, if the domestic retirement order awards to the alternate payee a portion of the member's accumulated contributions the alternate payee shall be entitled to all the same benefits and rights an inactive member has under chapter 13, title 59, Idaho Code. The alternate payee's benefit calculation for a lifetime annuity shall use the member's average monthly salary and base period as of the effective date of the order and the months of credited service transferred to the alternate payee's segregated account. The benefit calculation shall use the alternate payee's age with the appropriate reduction factors based on the alternate payee's age at the time of payment of the lifetime annuity. For the purpose of the lifetime annuity, the bridging factor, as specified in section 59-1355, Idaho Code, shall be the bridging factor between the effective date of the order or the last day of contributions by the member prior to the effective date of the order, whichever is earliest, and the date of the first lifetime annuity payment to the alternate payee. The alternate payee shall have the right to select any of the optional retirement allowances provided in section 59-1351, Idaho Code. The alternate payee shall have the right to name a beneficiary.

(7) For benefits defined under chapter 13, title 59, Idaho Code, for retired members, and for benefits under chapter 14, title 72, Idaho Code, the retirement system shall include in the alternate payee's amount or percentage of the benefit, on a proportional basis, all future adjustments, including postretirement increases that are granted by the retirement system, and any death benefit.

(8) For benefits under chapter 13, title 59, Idaho Code, for retired members, the form of payment previously elected by the member under section 59-1351, Idaho Code, cannot be changed by a domestic retirement order, except that a member's benefit may be adjusted as provided in section 59-1351(2), Idaho Code, if an alternate payee waives all survivor benefits otherwise payable as a contingent annuitant as provided in section 59-1319(1)(e), Idaho Code. Furthermore, no segregated account will be established by the retirement system for the alternate payee. Upon the death of the alternate payee, his/her percentage of the benefit will revert to the person or persons, including the member, who are entitled to the benefit under the system at the time of the alternate payee's death.

(9) For benefits defined under chapter 14, title 72, Idaho Code, the benefit transferred to the alternate payee shall start when the retirement system begins paying benefits to the member, surviving spouse, or surviving children of the member. The transferred benefit shall be payable only for the lifetime of the alternate payee and it shall not revert to the member, surviving spouse or surviving children of the member.

(10) The retirement system shall be authorized to issue any and all appropriate tax forms or reports for any payments made to the alternate payee.

(11) The retirement system, the retirement board, and officers and employees of the retirement system shall not be liable to any person for

making payments of any benefits in accordance with an approved domestic retirement order.

History.

I.C., § 59-1320, as added by 1998, ch. 22, § 4, p. 128; am. 1999, ch. 198, § 4, p. 508; am.

2004, ch. 328, § 2, p. 979; am. 2006, ch. 19, § 1, p. 71.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 19, deleted the former last sentence of subsection (7) which read: "Furthermore, upon the death of the alternate payee, his/her percentage of the benefit will revert to the person or persons, including the member, who are entitled to the benefit under the system at the time of the alternate payee's death"; added the last sentence of subsection (8); and rewrote subsection (9) which formerly read: "For benefits defined under chapter 14, title 72, Idaho Code, the benefit paid to the alternate payee shall start when the retirement system begins paying benefits to the member, surviving spouse, or surviving children. Unless otherwise ordered, in the event the member dies and leaves a surviving spouse, during the surviving spouse's lifetime, the alternate payee shall be paid his/her designated amount or percentage of the benefit. Unless

otherwise ordered, if there is no surviving spouse or the surviving spouse dies and there is a surviving child or children of the member who are under eighteen (18) years of age and unmarried, then the alternate payee shall be paid his/her designated amount or percentage of the benefit until the child or children reach the age of eighteen (18) years or marries, whichever occurs first."

Compiler's Notes.

Former § 59-1320 was amended and redesignated as § 59-1353 by § 41 of S.L. 1990, ch. 231.

Section 8 of S.L. 2006, ch. 19 provided "The provisions of Section 1 [this section] of this act shall not apply to a domestic retirement order issued prior to the effective date of this act [July 1, 2006] unless such an order is amended after the effective date of this act to incorporate those specific provisions."

59-1321. Procedure for employees of political subdivisions to be included in retirement system. — A political subdivision not participating in the system may, through its governing body, notify the board in writing that it elects to include its employees in the system. The board shall make a study and estimate the cost of including such employees in the system. Upon completion of the study and under the condition that the excess cost, if any, to include the employees as active members is paid upon admission, the political subdivision may apply for admission to the system. Payment of excess cost shall be made upon admission, unless the board in its sole discretion grants an extension. In no case shall an extension exceed two (2) years. Thereupon the board may upon such terms, not inconsistent with this chapter, as are set forth in a contract between the board and the political subdivision, integrate said political subdivision, and its employees into the system established by this chapter effective on the date of notice of election or later unless otherwise prohibited by law. The contract shall have no effect, however, until notice and hearing regarding it is afforded to such employees. Such contract shall provide for the appropriate funding of accrued benefits under any existing retirement program at the time the political subdivision is admitted to the system.

History.

1963, ch. 349, Art. 3, § 4, p. 988; am. 1976, ch. 97, § 3, p. 403; am. 1987, ch. 164, § 1, p.

322; am. 1989, ch. 187, § 1, p. 463; am. and redesign. 1990, ch. 231, § 17, p. 611.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1309.

Former § 59-1321 was amended and redesignated as § 59-1346 by § 34 of S.L. 1990, ch. 231.

Effective Dates.

Section 2 of S.L. 1989, ch. 187 declared an emergency. Approved March 29, 1989.

Section 3 of S.L. 1990, ch. 258 declared an emergency. Approved April 5, 1990, and retroactive to July 1, 1985.

59-1322. Employer contributions — Amounts — Rates — Amortization. — (1) Each employer shall contribute to the cost of the system. The amount of the employer contributions shall consist of the sum of a percentage of the salaries of members to be known as the "normal cost" and a percentage of such salaries to be known as the "amortization payment." The rates of such contributions shall be determined by the board on the basis of assets and liabilities as shown by actuarial valuation, and such rates shall become effective no later than January 1 of the second year following the year of the most recent actuarial valuation, and shall remain effective until next determined by the board.

(2) The normal cost rate shall be computed to be sufficient, when applied to the actuarial present value of the future salary of the average new member entering the system, to provide for the payment of all prospective benefits in respect to such member which are not provided by the member's own contribution.

(3) The amortization rate shall not be less than the minimum amortization rate computed pursuant to subsection (5) of this section, unless a one (1) year grace period has been made effective by the board. During a grace period, the amortization rate shall be no less than the rate in effect during the immediately preceding year. A grace period may not be made effective if more than one (1) other grace period has been effective in the immediately preceding four (4) year period.

(4) Each of the following terms used in this subsection and in subsection (5) of this section shall have the following meanings:

(a) "Valuation" means the most recent actuarial valuation.

(b) "Valuation date" means the date of such valuation.

(c) "Effective date" means the date the rates of contributions based on the valuation become effective pursuant to subsection (1) of this section.

(d) "End date" means the date thirty (30) years after the valuation date until July 1, 1993. On and after July 1, 1993, "end date" means twenty-five (25) years after the valuation date.

(e) "Unfunded actuarial liability" means the excess of the actuarial present value of (i) over the sum of the actuarial present values of (ii), (iii), (iv) and (v) as follows, all determined by the valuation as of the valuation date:

- (i) all future benefits payable to all members and contingent annuitants;
- (ii) the assets then held by the funding agent for the payment of benefits under this chapter;
- (iii) the future normal costs payable in respect of all then active members;

(iv) the future contributions payable under sections 59-1331 through 59-1334, Idaho Code, by all current active members;

(v) the future contributions payable to the retirement system under sections 33-107A and 33-107B, Idaho Code.

(f) "Projected salaries" means the sum of the annual salaries of all members in the system.

(g) "Scheduled amortization amount" means the actuarial present value of future contributions payable as amortization payment from the valuation date until the effective date.

(5) The minimum amortization payment rate shall be that percentage, calculated as of the valuation date, of the then actuarial present value of the projected salaries from the effective date to the end date which is equivalent to the excess of the unfunded actuarial liability over the scheduled amortization amount.

History.

1963, ch. 349, Art. 9, § 1, p. 988; am. 1974, ch. 57, § 17, p. 1118; am. 1979, ch. 158, § 5, p. 478; am. 1980, ch. 51, § 1, p. 105; am. 1982, ch. 243, § 4, p. 628; am. 1984, ch. 132, § 7, p. 308; am. 1986, ch. 143, § 3, p. 399; am. 1986,

ch. 146, § 1, p. 408; am. 1987, ch. 348, § 1, p. 763; am. 1988, ch. 237, § 1, p. 465; am. and redesign. 1990, ch. 231, § 18, p. 611; am. 1990, ch. 249, § 8, p. 702; am. 1992, ch. 342, § 5, p. 1037; am. 1999, ch. 271, § 1, p. 683.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1330.

Former § 59-1322 was amended and redesignated as § 59-1348 by § 36 of S.L. 1990, ch. 231 and later repealed by S.L. 1999, ch. 199, § 8, effective July 1, 1999.

Effective Dates.

Section 18 of S.L. 1974, ch. 57 provided that the act should take effect on and after July 1, 1974.

Section 6 of S.L. 1979, ch. 158 declared an emergency. Approved March 29, 1979.

59-1323. Transfer of moneys for school personnel. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former § 59-1323, which comprised I.C., § 59-1332A, as added by 1969, ch. 144, § 3, p. 466; am. 1984, ch. 180, § 5, p. 426; am. 1988, ch. 274, § 2, p. 904; am. and redesign. 1990, ch. 231, § 19, p. 611, was repealed by S.L. 1994, ch. 428, § 15, effective July 1, 1994.

Compiler's Notes.

Another former § 59-1323 was amended and redesignated as § 59-1358 by S.L. 1990, ch. 231.

59-1324. Transfer of moneys from state junior college account [state community college account]. — After July 1, 1984, the state board of education shall, at the request of the board, direct the transfer from the state junior college account [state community college account] or from appropriations made for that purpose to the public employee retirement account of an aggregate sum in lieu of and equivalent to individual employer contributions provided by section 59-1322, Idaho Code, required with respect to employees of junior college districts on the basis of salaries paid such employees as certified by the board to the state treasurer.

History.

I.C., § 59-1332B, as added by 1969, ch. 144, § 4, p. 466; am. 1984, ch. 180, § 6, p. 426; am. and redesisg. 1990, ch. 231, § 20, p. 611.

STATUTORY NOTES**Cross References.**

Public employee retirement account, § 59-1311.

State board of education, § 33-101 et seq.

State junior college account, § 33-2139.

State treasurer, § 67-1201 et seq.

Former § 59-1324 was amended and redesignated as § 59-1361 by § 49 of S.L. 1990, ch. 231.

The bracketed insertions in the section heading and in the text were added by the compiler to correct the name of the referenced account. See § 33-2139.

Compiler's Notes.

This section was formerly compiled as § 59-1332B.

59-1325. Employer remittance to board — Collection of delinquencies. — (1) Each employer, or, where the employer's payroll is paid separately by departments, each department of the employer, shall remit to the retirement board all contributions required of it and its employees on the basis of salaries paid by it during each pay period together with whatever contributions or contribution credits may be required to correct previous errors or omissions. These remittances shall be accompanied by such reports as are required by the board to determine contributions required and member benefit entitlements established under this chapter and, unless extended in writing by the executive director, shall be remitted no later than five (5) days after each pay date. Such contributions shall be remitted together with contributions remitted pursuant to subsection (5) of section 59-1308, Idaho Code, as directed by the board. Thereafter, unpaid contributions shall be considered delinquent and interest will begin accruing at the greater of the rate of interest provided in section 28-22-104(1), Idaho Code, or regular interest. The executive director may, in his discretion, waive these interest charges in extraordinary circumstances.

(2) If any employer shall fail or refuse to remit any such contributions within thirty (30) days after the date due, the board may certify to the state controller the fact of such failure or refusal and the amount of the delinquent contribution or contributions, together with interest. A copy of such certification and request shall be furnished the delinquent employer.

(3) The state controller shall deduct said amount as an offset, together with interest charges, from any funds payable then or in the future to the delinquent employer and shall pay such amounts to the retirement fund.

History.

1963, ch. 349, Art. 9, § 3, p. 988; am. 1969, ch. 283, § 13, p. 856; am. 1971, ch. 49, § 13, p. 105; am. 1976, ch. 97, § 10, p. 403; am. 1977, ch. 178, § 8, p. 459; am. 1987, ch. 164, § 4, p.

322; am. and redesisg. 1990, ch. 231, § 21, p. 611; am. 1994, ch. 180, § 140, p. 420; am. 1999, ch. 195, § 1, p. 506; am. 2002, ch. 8, § 1, p. 11.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Compiler's Notes.

This section was formerly compiled as § 59-1332.

Former § 59-1325 was amended and redesignated as § 59-1317 by § 15 of S.L. 1990, ch. 231.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided

that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 140 of S.L. 1994, ch. 180 became effective January 2, 1995.

59-1325A. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 59-1325A was amended and re-

designated as § 59-1316 by § 14 of S.L. 1990, ch. 231.

59-1326. Procedure for complete or partial withdrawal of political subdivisions from the system — Calculation of withdrawal liability — Indemnification. — (1) A political subdivision, through its governing body, may by resolution adopted by two-thirds (2/3) of the members of the governing body, declare its intent to withdraw completely from the system and to submit the question of withdrawing from the system to the active members of the political subdivision. The political subdivision shall notify its employees and the retirement board, in writing, of its action, and shall advise the active members of their right to vote for or against withdrawal, as provided in subsection (2) of this section. A political subdivision shall automatically be considered to have requested a complete withdrawal from the system the date the political subdivision permanently ceases to employ active members. A withdrawing political subdivision shall be required to make withdrawal liability payments as provided in this section.

(2) All active members of the withdrawing political subdivision shall be allowed to vote by secret ballot for or against allowing the political subdivision to completely withdraw from the system. More than fifty percent (50%) of the withdrawing political subdivision's active members must approve the complete withdrawal at least thirty (30) days before the effective withdrawal date. All active members of the withdrawing political subdivision who are on the political subdivision's payroll thirty (30) days before the effective withdrawal date shall be allowed to vote. If more than fifty percent (50%) of the withdrawing political subdivision's active members fail to vote for complete withdrawal, the political subdivision shall not be allowed to withdraw. Fifteen (15) days before the effective withdrawal date the governing board of the withdrawing political subdivision shall certify to the retirement board the results of the voting by the active members.

(3) Partial withdrawal occurs for a political subdivision when its average membership declines from one fiscal year to the next by more than twenty-five (25) members and twenty-five percent (25%) of the average

membership in the earlier year. The effective date of partial withdrawal is the first day after the end of the later year.

"Average membership" for a fiscal year shall equal one-twelfth ($\frac{1}{12}$) of the sum of the number of active members employed during each month of that year.

(4) Complete withdrawal by a political subdivision shall be the first day of the month following the date the political subdivision ceases to employ active members or the first day of the month following sixty (60) days from the date the board receives the political subdivision's written request to withdraw. However, the complete withdrawal date shall not occur before the withdrawal liability is determined, as provided in subsection (7) of this section.

(5) After complete withdrawal, all employees of the withdrawing political subdivision shall be ineligible to accrue future benefits with the system due to employment with the withdrawing political subdivision. The withdrawing political subdivision shall be ineligible to request to be included in the system, as provided in section 59-1321, Idaho Code, for five (5) years after its complete withdrawal date.

(6) All active or inactive members of the political subdivision shall be eligible for benefits accrued with the system up to the complete withdrawal date. However, no retirement allowance or separation benefit shall be paid until the member actually separates from service with the withdrawing political subdivision, and there is no guarantee of right to re-employment made by the withdrawing political subdivision. If the person returns to employment with the same withdrawing political subdivision within ninety (90) days, any separation benefit or retirement allowance paid to the person shall be repaid to the system.

(7) On the date of complete withdrawal, the withdrawal liability of an employer is (a) multiplied by the ratio of (b) to (c) as follows:

(a) The excess of the actuarial present value of the vested accrued benefits of the system's members over the fair value of its assets, both as of the date of the last actuarial valuation adopted by the board prior to the complete withdrawal date based on the assumption that thirty percent (30%) of all terminating employees will eventually return to employment covered by the system and that future cost-of-living allowances as provided in section 59-1355, Idaho Code, will be at a rate of two percent (2%) per year;

(b) The total present value of accrued benefits of all active members of the withdrawing political subdivision as of the last actuarial valuation adopted by the board prior to the complete withdrawal date;

(c) The total present value of accrued benefits of all active members of the system as of the last actuarial valuation adopted by the board prior to the complete withdrawal date.

The actuarial costs to determine the amount described in subsection (7)

(b) of this section shall be paid by the withdrawing political subdivision.

(8) On the date of partial withdrawal, the withdrawal liability of an employer is the same as if complete withdrawal had occurred, multiplied by one (1) minus the ratio of (a) to (b) as follows:

(a) The average membership of the employer estimated by the board for the year commencing on such date;

(b) The average membership of the employer during the second complete fiscal year prior to such date.

(9) The withdrawing political subdivision shall enter into a contract with the system which establishes terms for the political subdivision's payment of its withdrawal liability. The contract shall use an interest rate equal to the interest rate used in the actuarial valuation adopted by the board prior to the withdrawal date, net of actuarially assumed investment expenses. The contract shall not extend the duration of the withdrawal liability payments beyond ten (10) years or the end of the current amortization period whichever is less. The contract shall be a financial obligation of the withdrawing political subdivision and any of its successors and assigns. "Current amortization period" means the period over which the amortization payment rate times the actuarial present value of the projected salaries is equivalent to the unfunded actuarial liability, all determined by the current valuation last adopted by the board prior to the complete withdrawal date.

(10) Upon the complete withdrawal of the political subdivision, the system shall have no further legal obligation to the political subdivision or its employees, nor shall the system be held accountable for the continued future accrual of any retirement benefit rights to which such employees may be entitled beyond the complete withdrawal date. Any litigation regarding the forfeiture of any benefits because of the political subdivision's complete withdrawal from the system shall be the sole legal responsibility of the withdrawing political subdivision and the withdrawing political subdivision shall indemnify and hold harmless the system, its board, its employees and the state of Idaho, from any claims, losses, costs, damages, expenses, and liabilities, including without limitation, court costs and reasonable attorney's fees, asserted by any person or entity as a result of the political subdivision's withdrawal from the system.

History.

I.C., § 59-1309A, as added by 1981, ch. 152, § 1, p. 263; am. 1984, ch. 132, § 2, p. 308; am.

and redesign. 1990, ch. 231, § 22, p. 611; am. 1992, ch. 220, § 5, p. 658; am. 1996, ch. 251, § 1, p. 792.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1309A.

Former § 59-1326 was amended and redesignated as § 59-1304 by § 4 of S.L. 1990, ch. 231.

emergency and provided that the act should be in full force and effect retroactive to January 1, 1981. Approved March 27, 1981.

Section 2 of S.L. 1996, ch. 251 declared an emergency. Approved March 14, 1996.

Effective Dates.

Section 2 of S.L. 1981, ch. 152 declared an

OPINIONS OF ATTORNEY GENERAL

A political subdivision that has continued as a qualified employing entity could not meet

either the conditions of this section for complete or partial withdrawal and, thus, could

not withdraw from PERSI (Public Employees Retirement System of Idaho). OAG 96-1.

Idaho does not currently recognize a public employee's right to future accrual of benefits. OAG 96-1.

If a public subdivision were allowed to

voluntarily withdraw from PERSI (Public Employees Retirement System of Idaho) by future legislation, there is no right for the current employees of the subdivision to continue to accrue membership in PERSI, i.e., a right to future benefits. OAG 96-1.

59-1327. Making a false claim — Misdemeanor. — Any person making a false claim for allowance of benefits or payment of money under the provisions of this chapter, knowing the same to be false, shall be guilty of a misdemeanor and shall be punished pursuant to the provisions of section 18-113, Idaho Code.

History.

I.C., § 59-1327, as added by 1993, ch. 349,
§ 2, p. 1294.

STATUTORY NOTES

Compiler's Notes.

Former § 59-1327 was amended and redес-

igned as § 59-1305 by § 5 of S.L. 1990, ch. 231.

59-1328. Administrative penalties for failure to comply with reporting requirements. — The board may assess actual costs including staff salaries and benefits and miscellaneous costs such as computer programming and processing, as an administrative penalty against any employer which refuses or fails to comply with the board's reporting requirements after the system staff has attempted to obtain compliance for a period of three (3) months. After three (3) months, the actual administrative costs shall be monitored and the board may assess them directly against the noncomplying employer unit.

History.

I.C., § 59-1328, as added by 1993, ch. 348,
§ 1, p. 1293.

STATUTORY NOTES

Compiler's Notes.

Former § 59-1328 was amended and redес-

igned as § 59-1312 by § 10 of S.L. 1990, ch. 231.

59-1329. Board regulations. — The board is authorized to promulgate rules providing for imposition of interest on delinquent employee contributions.

History.

I.C., § 59-1329, as added by 1993, ch. 350,
§ 4, p. 1295.

STATUTORY NOTES

Compiler's Notes.

Former § 59-1329 was amended and redес-

igned as § 59-1314 by § 12 of S.L. 1990, ch. 231.

59-1330. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. Former § 59-1330 was amended and redesignated as § 59-1322 by § 18 of S.L. 1990, ch. 231.

59-1331. Contributions. — (1) Beginning on or after the later of the date of establishment or employment, each active member shall contribute toward the cost of the benefits provided under this chapter. This contribution shall be made in the form of a deduction from salary to be transmitted to the board in accordance with section 59-1325, Idaho Code.

(2) Any person who was prevented from being an active member during his first twelve (12) months of employment due to the restriction contained in subsection (2) of section 59-1302, Idaho Code, may, prior to December 31, 1975, pay the board the contributions he would have made absent said restriction and be credited with membership service for such period of time. The time for payment shall be extended provided such payment includes regular interest from December 31, 1975.

(3) Employee contributions received by the board in error may be refunded upon a distributable event with regular interest.

History. 1963, ch. 349, Art. 2, § 1, p. 988; am. 1969, ch. 283, § 2, p. 856; am. 1969, ch. 460, § 2, p. 1288; am. 1971, ch. 49, § 2, p. 105; am. 1974, ch. 57, § 3, p. 1118; am. 1979, ch. 158, § 2, p. 478; am. 1981, ch. 10, § 2, p. 16; am. 1984, ch. 130, § 1, p. 304; am. and redesignig. 1990, ch. 231, § 24, p. 611; am. 2001, ch. 138, § 1, p. 498.

STATUTORY NOTES

Compiler's Notes. This section was formerly compiled as § 59-1303. Former § 59-1331 was amended and redesignated as § 59-1311 by § 9 of S.L. 1990, ch. 231.

59-1332. Pick up of employee contributions. — (1) An employer, pursuant to the provisions of section 414(h)(2) of the Internal Revenue Code of 1954, as amended, shall pick up and pay the contributions which would be payable by the employees as members under sections 59-1331 and 72-1431, Idaho Code, with respect to the service of employees after June 30, 1983.

(2) The members' contributions picked up by an employer shall be designated for all purposes of the retirement system as member contributions, except for the determination of tax upon a distribution from the retirement system. These accumulated contributions shall become part of the members' accumulated contributions, but accounted for separately from those previously accumulated.

(3) Member contributions picked up by an employer shall be payable from the same source as is used to pay compensation to a member, and shall be included in the member's salary as defined in subsection (31) of section 59-1302, Idaho Code.

History.

I.C., § 59-1303A, as added by 1983, ch. 163,

§ 1, p. 469; am. 1986, ch. 147, § 2, p. 409; am. and redesisg. 1990, ch. 231, § 25, p. 611.

STATUTORY NOTES**Federal References.**

Section 412(h)(2) of the Internal Revenue Code of 1954, referred to in subsection (1), is compiled as 26 U.S.C.S. § 412(h)(2).

Former § 59-1332 was amended and redesignated as § 59-1325 by § 21 of S.L. 1990, ch. 231.

Compiler's Notes.

This section was formerly compiled as § 59-1303A.

59-1332A. [Amended and Redesignated.]**STATUTORY NOTES****Compiler's Notes.**

Former § 59-1332A was amended and redesignated as § 59-1323 by § 19 of S.L. 1990,

ch. 231, which section was later repealed by S.L. 1994, ch. 428, § 15.

59-1332B. [Amended and Redesignated.]**STATUTORY NOTES****Compiler's Notes.**

Former § 59-1332B was amended and re-

designated as § 59-1324 by § 20 of S.L. 1990, ch. 231.

59-1333. Contributions from employees. — The contribution for a member who is not classified as a police officer or firefighter shall be sixty percent (60%) of the employer contribution rate determined pursuant to section 59-1322, Idaho Code, and rounded to the nearest one hundredth percent (.01%) of salary; provided, however, that such member rate effective October 1, 1985, shall remain at five and thirty-four hundredths percent (5.34%) of salary until the first time after October 1, 1985, that the employer rate is changed from eight and eighty-nine hundredths percent (8.89%) of salary. The board is specifically authorized to certify to the state controller the necessary adjustments in the rate of member contributions.

History.

1963, ch. 349, Art. 2, § 2, p. 988; am. 1974, ch. 57, § 4, p. 1118; am. 1977, ch. 178, § 6, p. 459; am. 1980, ch. 143, § 2, p. 308; am. 1982,

ch. 243, § 1, p. 628; am. 1986, ch. 143, § 1, p. 399; am. and redesisg. 1990, ch. 231, § 26, p. 611; am. 1994, ch. 180, § 141, p. 420.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 59-1304.

ignated as § 59-1318 by § 16 of S.L. 1990, ch. 231.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R.

Cross References.

State controller, § 67-1001 et seq.

Compiler's Notes.

Former § 59-1333 was amended and redesi-

No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to

this section by § 141 of S.L. 1994, ch. 180 became effective January 2, 1995.

JUDICIAL DECISIONS

Cited in: *McNichols v. Public Employee Retirement Sys.*, 114 Idaho 247, 755 P.2d 1285 (1988).

59-1334. Contributions — From policemen and firefighters. — The contribution for a member who is classified as a police officer or firefighter shall be seventy-two percent (72%) of the employer contribution rate determined pursuant to section 59-1322, Idaho Code, and rounded to the nearest one hundredth percent (.01%) of salary; provided, however, that such member rate effective October 1, 1985, shall remain at six and forty hundredths percent (6.40%) of salary until the first time after October 1, 1985, that the employer rate is changed from eight and eighty-nine hundredths percent (8.89%) of salary. The board is specifically authorized to certify to the state controller the necessary adjustments in the rate of member contributions.

History.

1963, ch. 349, Art. 2, § 3, p. 988; am. 1974, ch. 57, § 5, p. 1118; am. 1977, ch. 178, § 7, p. 459; am. 1980, ch. 143, § 3, p. 308; am. 1982,

ch. 243, § 2, p. 628; am. 1986, ch. 143, § 2, p. 399; am. and redessig. 1990, ch. 231, § 27, p. 611; am. 1994, ch. 180, § 142, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Prior Laws.

Former § 59-1334 which comprised S.L. 1963, ch. 349, Art. 10, § 1, p. 988, was repealed by S.L. 1969, ch. 283, § 14.

Compiler's Notes.

This section was formerly compiled as § 59-1305.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 142 of S.L. 1994, ch. 180 became effective January 2, 1995.

JUDICIAL DECISIONS

Cited in: *McNichols v. Public Employee Retirement Sys.*, 114 Idaho 247, 755 P.2d 1285 (1988).

59-1335. Voluntary contributions. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 59-1305A, as added by 1967, ch. 398, § 2, p. 1184; am. 1974, ch. 57, § 6, p. 1118; am. 1981, ch. 10, § 3, p. 16; am. and redessig. 1990, ch.

231, § 28, p. 611, was repealed by S.L. 2006, ch. 149, § 1.

Section 2 of S.L. 2006, ch. 149 provided "Any existing funds contributed under Section 59-1335, Idaho Code, before July 1, 2006,

shall be refunded in a lump-sum payment to the contributing member.”

Former § 59-1335, as enacted by S.L. 1971,

ch. 49, § 15, was redesignated as § 59-1315 by S.L. 1990, ch. 231, § 13.

59-1336. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 59-1336 was amended and reded-

ignated as § 59-1371 by § 50 of S.L. 1990, ch. 231.

59-1337. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 59-1337 was amended and reded-

ignated as § 59-1372 by § 51 of S.L. 1990, ch. 231.

59-1338. Conditions for contributions pursuant to which membership service retirement allowance may be granted certain school employees from July 1, 1965 to July 1, 1967. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1967, ch.

115, § 3, p. 222, was repealed by S.L. 1987, ch. 164, § 5.

59-1339. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 59-1339 was amended and reded-

ignated as § 59-1373 by § 52 of S.L. 1990, ch. 231.

59-1340. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 59-1340 was amended and reded-

ignated as § 59-1374 by § 53 of S.L. 1990, ch. 231.

59-1341. Conditions of eligibility for service retirement. — A vested member is eligible for service retirement as indicated below, based upon his service retirement ratio. A member's service retirement ratio shall, at retirement, be equal to the ratio of (1) to (2) as follows:

(1) The number of years of credited service for which the member was classified as a police officer or firefighter:

(2) The member's total number of years of credited service.

For service retirement ratio:

0.000 to 0.100

0.101 to 0.300

Service retirement eligibility age is:

65

64

For service retirement ratio:	Service retirement eligibility age is:
0.301 to 0.500	63
0.501 to 0.700	62
0.701 to 0.900	61
0.901 to 1.000	60

A person who was an active member on June 30, 1985 shall be deemed to have a service retirement ratio of 1.000 either if the member was a police officer or firefighter on that date and continuously thereafter to retirement or if at the time of retirement the majority of the member's credited service has been that of a police officer or firefighter.

History.

1963, ch. 349, Art. 4, § 1, p. 988; am. 1965, ch. 165, § 1, p. 324; am. 1967, ch. 398, § 4, p. 1184; am. 1969, ch. 283, § 3, p. 856; am. 1971, ch. 49, § 5, p. 105; am. 1979, ch. 158, § 3, p.

478; am. 1985, ch. 168, § 1, p. 444; am. 1987, ch. 164, § 2, p. 322; am. and redesign. 1990, ch. 231, § 29, p. 611; am. 1990, ch. 249, § 2, p. 702; am. 1999, ch. 199, § 2, p. 519.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1310.

JUDICIAL DECISIONS

Minimal Service Requirement.

Where plaintiff had not accumulated five years of membership service, she had no

claim to retirement benefits. Jackson v. Minidoka Irrigation Dist., 98 Idaho 330, 563 P.2d 54 (1977).

59-1342. Computation of service retirement allowances — Minimum benefits. — (1) The annual amount of accrued retirement allowance for each month of credited service for which a member was not classified as a police member or firefighter shall equal one and two-thirds percent (1 2/3%) of the member's average monthly salary. Effective October 1, 1992, the annual amount of accrued retirement allowance for all service for which a member was not classified as a police member or firefighter shall equal one and seventy-five hundredths percent (1.75%) of the member's average monthly salary; effective October 1, 1993, the annual amount of accrued retirement allowance shall equal one and eight hundred thirty-three thousandths percent (1.833%) of the member's average monthly salary; effective October 1, 1994, the annual amount of accrued retirement allowance shall equal one and nine hundred seventeen thousandths percent (1.917%); and effective June 30, 2000, the annual amount of accrued retirement allowance shall equal two percent (2%) of the member's average monthly salary. Entitlement to an annual amount of accrued retirement allowance shall not vest until the effective date of that annual amount of accrued retirement allowance. The retirement benefits shall be calculated on the amounts, terms and conditions in effect on the date of the final contribution by the member. The annual amount of initial service retirement allowance of such a member shall equal (a) or (b), whichever is greater:

(a) The member's accrued retirement allowance; or

(b) Five dollars (\$5.00) multiplied by the number of months of credited

service and by the bridging factor, as provided in section 59-1355, Idaho Code, between July 1, 1974 and the first of the month following the member's final contribution.

(2) The annual amount of accrued retirement allowance for each month of credited service for which a member was classified as a police member or firefighter shall equal two percent (2%) of the member's average monthly salary. Effective October 1, 1992, the annual amount of accrued retirement allowance for all service for which a member was classified as a police member or firefighter shall equal two and seventy-five thousandths percent (2.075%) of the member's average monthly salary; effective October 1, 1993, the annual amount of accrued retirement allowance shall equal two and fifteen hundredths percent (2.15%) of the member's average monthly salary; effective October 1, 1994, the annual amount of accrued retirement allowance shall equal two and two hundred twenty-five thousandths percent (2.225%); and effective June 30, 2000, the annual amount of accrued retirement allowance shall equal two and three-tenths percent (2.3%) of the member's average monthly salary. Entitlement to an annual amount of accrued retirement allowance shall not vest until the effective date of that annual amount of accrued retirement allowance. The retirement benefits shall be calculated on the amounts, terms and conditions in effect on the date of the final contribution by the member. The annual amount of initial service retirement allowance of such a member shall equal (a) or (b), whichever is greater:

(a) The member's accrued retirement allowance; or

(b) Six dollars (\$6.00) multiplied by the number of months of credited service and by the bridging factor, as provided in section 59-1355, Idaho Code, between July 1, 1974 and the first of the month following the member's final contribution.

(3) Provisions of this section shall be applicable to members and contingent annuitants of the retirement system and to members, annuitants and beneficiaries of the teachers and city systems. In any recomputation of an initial retirement allowance for a person not making a final contribution subsequent to 1974, the bridging factor referred to in subsections (1) and (2) shall be 1.000. Any recomputed retirement allowance shall be payable only prospectively from July 1, 1974.

(4) Benefits payable to a person who became a member prior to July 1, 1974, or to the member's beneficiaries shall never be less than they would have received under this chapter as in effect on June 30, 1974; provided, however, that the member shall have accrued the amount of accumulated contributions required thereby prior to payment of an initial retirement allowance.

(5) If the majority of a member's credited service is as an elected official or as an appointed official, except as a member of the Idaho legislature, and that official was normally in the administrative offices of the employer less than twenty (20) hours per week during the term of office, or was normally not required to be present at any particular work station for the employer twenty (20) hours per week or more during the term of office, that member's initial service retirement allowance shall be the sum of:

- (a) That amount computed under subsection (1) and/or (2) of this section for only those months of service as an elected or an appointed official that are in excess of the months of other credited service, without consideration of any other credited service; and
- (b) That accrued service retirement allowance that is computed from an average monthly salary for salary received during the member's total months of credited service excluding those excess months referenced in subsection (5)(a) of this section.

The initial service retirement allowance of members of the Idaho legislature will be computed under subsection (1) and/or (2) of this section, on the basis of their total months of credited service.

(6) In no case, however, will a member's initial service retirement benefit be equal to more than the member's accrued benefit as of May 1, 1990, or one hundred percent (100%) of the member's average compensation for the three (3) consecutive years of employment which produce the greatest aggregate compensation, whichever is greater. If the benefit is calculated to exceed one hundred percent (100%) of the member's average compensation, the member shall be eligible for and may choose either:

- (a) An annual service retirement allowance equal to the member's average annual compensation for the three (3) consecutive years of employment which produced the greatest aggregate compensation; or
- (b) A separation benefit.

(7) The annual amount of initial service retirement allowance of a member who is over age seventy (70) on the effective date of the member's retirement shall be a percentage of the member's initial service retirement allowance. Such percentage shall be one hundred percent (100%) increased as determined by the board to compensate for each month that the member's retirement is deferred beyond age seventy (70).

(8) A member's accrued retirement allowance, as otherwise provided in subsections (1), (2), (3), (4) and (5) of this section, shall not be less than the minimum accrued retirement allowance provided in this subsection. The determination of the initial service retirement allowance provided in subsections (1) and (2) of this section, and the application of the provisions in subsections (6) and (7) of this section, will be made after the determination of the minimum accrued retirement allowance provided in this subsection.

This subsection shall apply to members who have at least two (2) separate periods of employment covered under this chapter where each separate period of employment would otherwise be eligible for a separation benefit described in section 59-1359, Idaho Code. For purposes of this subsection, if a separation of employment occurs that does not exceed sixty (60) consecutive calendar months then the member's period of employment shall be considered a continuous period of employment. For purposes of this subsection, date of last contribution is the date of final contribution for each period or periods of employment.

For each separate period of employment considered under this subsection, the member must not have received a separation benefit for that period, or if he has received such a separation benefit under section 59-1359, Idaho Code, he must have completed reinstatement of all previous credited service

associated with all separation benefits for all periods of employment as permitted under section 59-1360, Idaho Code.

The minimum accrued retirement allowance shall be equal to the largest accrued retirement allowance calculated at each date of last contribution based upon the benefit and eligibility provisions in effect as of the date of the last contribution made during such separate period of employment. For purposes of determining the accrued retirement allowance for each date of last contribution:

- (a) The member must have at least sixty (60) months of credited service at the date of last contribution;
- (b) The member's months of credited service and average monthly salary are determined based solely on all periods of employment up to that date of last contribution, ignoring later periods of employment; and
- (c) The accrued retirement allowance computed for each period is multiplied by the bridging factor as provided in section 59-1355(3), Idaho Code, between the date of the last contribution made during that separate period of employment and the date of the member's final contribution made during the last period of employment prior to retirement.

History.

I.C., § 59-1319, as added by 1974, ch. 57, § 10, p. 1118; am. 1979, ch. 26, § 2, p. 40; am. 1985, ch. 168, § 2, p. 444; am. 1985, ch. 193, § 1, p. 492; am. and redesisg. 1990, ch. 231, § 30, p. 611; am. 1990, ch. 249, § 4, p. 702;

am. 1990, ch. 258, § 1, p. 738; am. 1991, ch. 61, § 4, p. 140; am. 1992, ch. 220, § 6, p. 658; am. 1992, ch. 342, § 2, p. 1037; am. 1994, ch. 276, § 3, p. 856; am. 1997, ch. 110, § 1, p. 266; am. 2000, ch. 209, § 1, p. 533; am. 2009, ch. 237, § 1, p. 729.

STATUTORY NOTES

Prior Laws.

Former § 59-1342 which comprised 1967, ch. 115, § 7, p. 222, was repealed by S.L. 1987, ch. 164, § 6.

Amendments.

The 2009 amendment, by ch 237, at the end of the introductory paragraph in subsection (5) substituted "shall be the sum of" for "for service credited only during that period would be computed under subsection (1)(b) and/or (2)(b) of this section, without consideration of any other credited service, then it will be so computed for that period of service. If that member has credited service from any other employment, the accrued service retirement allowance for the credited service from such

other employment shall be computed from an average monthly salary for salary received during the period of such other employment"; and added subsections (5)(a) and (5)(b).

Compiler's Notes.

This section was formerly compiled as § 59-1319.

Effective Dates.

Section 3 of S.L. 1990, ch. 258 declared an emergency and provided that the act should be effective retroactive to July 1, 1985. Approved April 5, 1990.

Section 2 of S.L. 2000, ch. 209 provided that the act shall be in full force and effect on and after July 1, 2000.

JUDICIAL DECISIONS

Cited in: McNichols v. Public Employee Retirement Sys., 114 Idaho 247, 755 P.2d 1285 (1988).

59-1343. Conversion and commutation of certain payments. —
Unless the retirement board establishes a different level by rule, benefit

payments of less than twenty dollars (\$20.00) per month shall be commuted into an actuarially equivalent single sum.

History.

I.C., § 59-1315, as added by 1974, ch. 57, § 7, p. 1118; am. 1981, ch. 10, § 5, p. 16; am. and redesign. 1990, ch. 231, § 31, p. 611; am. 1993, ch. 350, § 5, p. 1295; am. 2001, ch. 138, § 2, p. 498.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1315. Former § 59-1343 was redesignated as § 59-1375 by § 54 of S.L. 1990, ch. 231.

59-1344. Time for payment of service retirement or early retirement. — A service retirement allowance or early retirement allowance shall become payable to a member on the first of the month following his ceasing to be an employee while eligible for service retirement or early retirement and on the first of each month thereafter to and including the first of the month of the member's death.

History.

1963, ch. 349, Art. 5, § 1, p. 988; am. and redesign. 1990, ch. 231, § 32, p. 611.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1311. Former § 59-1344 was amended and redesignated as § 59-1313 by § 11 of S.L. 1990, ch. 231.

59-1345. Vested member eligible for early retirement. — A vested member who is not eligible for either service retirement or disability retirement is eligible for early retirement if he is within ten (10) years of being eligible for service retirement. Additionally, a vested member is eligible for early retirement on termination of disability retirement as provided by section 59-1354(2), Idaho Code.

History.

I.C., § 59-1345, as added by 1990, ch. 231, § 33, p. 611; am. 1994, ch. 209, § 2, p. 658; am. 1999, ch. 199, § 3, p. 519.

STATUTORY NOTES

Compiler's Notes.

Former § 59-1345 was redesignated as § 59-1376 by § 55 of S.L. 1990, ch. 231.

59-1346. Computation of early retirement allowances. — (1) The annual amount of initial early retirement allowance of a member shall be a percentage of the member's accrued retirement allowance. Such percentage shall be one hundred percent (100%) if the sum of the number of years and months of credited service and the age in years and months is equal to or greater than the sum indicated below. Otherwise, such percentage shall be one hundred percent (100%) reduced by one-fourth of one percent (.25%) for

each month up to sixty (60) months that the member's retirement precedes the date the member would be eligible to receive full accrued benefit without additional credited service, and further reduced by two-thirds of one percent (.6667%) for each additional month. Effective October 1, 1992, the further reduction for each additional month shall equal six thousand and forty-two ten-thousandths of one percent (.6042%) of the member's average monthly salary; effective October 1, 1993, the further reduction for each additional month shall equal five thousand four hundred and seventeen ten-thousandths of one percent (.5417%) of the member's average monthly salary; and effective October 1, 1994, the further reduction for each additional month shall equal four thousand seven hundred and ninety-two ten-thousandths of one percent (.4792%) of the member's average monthly salary. Entitlement to an annual amount of accrued retirement allowance shall not vest until the effective date of that annual amount of accrued retirement allowance. The retirement benefits shall be calculated on the amounts, terms and conditions in effect at the date of the final contribution by the member.

If a member's service retirement ratio as defined by section 59-1341, Idaho Code, is:	Then the sum of the member's credited service and age must be equal to or greater than:
0.000 to 0.050	90
0.051 to 0.150	89
0.151 to 0.250	88
0.251 to 0.350	87
0.351 to 0.450	86
0.451 to 0.550	85
0.551 to 0.650	84
0.651 to 0.750	83
0.751 to 0.850	82
0.851 to 0.950	81
0.951 to 1.000	80

(2) If the majority of a member's credited service is as an elected official or as an appointed official, except as a member of the Idaho legislature, and that official was normally in the administrative offices of the employer less than twenty (20) hours per week during the term of office, or was normally not required to be present at any particular work station for the employer twenty (20) hours per week or more during the term of office, that member's accrued retirement allowance shall be the sum of:

(a) That amount computed from an average monthly salary for salary received only for those months of service as an elected or as an appointed official that are in excess of the months of other credited service without consideration of any other credited service; and

(b) That accrued retirement allowance that is computed from an average monthly salary for salary received during the member's total months of credited service excluding those excess months referenced in subsection (2)(a) of this section.

The initial service retirement allowance of members of the Idaho legislature

will be computed under the provisions of this section, on the basis of their total months of credited service.

History.

I.C., § 59-1321, as added by 1980, ch. 143, § 4, p. 308; am. 1982, ch. 243, § 3, p. 628; am. 1985, ch. 168, § 3, p. 444; am. 1985, ch. 193, § 2, p. 492; am. and redesisg. 1990, ch. 231,

§ 34, p. 611; am. 1990, ch. 258, § 2, p. 738; am. 1992, ch. 220, § 7, p. 658; am. 1992, ch. 342, § 3, p. 1037; am. 1993, ch. 350, § 6, p. 1295; am. 1994, ch. 276, § 4, p. 856; am. 2009, ch. 237, § 2, p. 729.

STATUTORY NOTES

Prior Laws.

Another former § 59-1321, as added by 1974, ch. 57, § 13, p. 1118, was repealed by S.L. 1980, ch. 143, § 1.

Amendments.

The 2009 amendment, by ch. 237, at the end of the introductory paragraph in subsection (2), substituted "retirement allowance shall be the sum of" for "retirement allowance for service credited only during that period shall be"; added subsections (2)(a) and (2)(b); and deleted subsection (3) which read: "If that

member has credited service from any other employment, the accrued retirement allowance for the credited service from such other employment shall be computed from an average monthly salary for salary received during the period of such other employment."

Compiler's Notes.

This section was formerly compiled as § 59-1321.

Former § 59-1346 was amended and redesignated as § 59-1381 by § 56 of S.L. 1990, ch. 231.

59-1347 — 59-1349. Inactive member eligible for vested retirement — Computation of allowance — Time for payment. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

The following sections were repealed by S.L. 1999, ch. 199, § 8, p. 519, effective July 1, 1999.

§ 59-1347, which comprised 1990, ch. 231, § 35, p. 611.

§ 59-1348, which comprised 1963, ch. 349, Art. 6, § 4, p. 988; am. 1974, ch. 57, § 14, p. 1118; am. 1984, ch. 132, § 4, p. 308; am. and redesisg. 1990, ch. 231, § 36, p. 611; am. 1994, ch. 209, § 3, p. 658.

§ 59-1349, which comprised 1963, ch. 349,

Art. 5, § 2, p. 988; am. and redesisg. 1990, ch. 231, § 37, p. 611.

Former § 59-1347 was amended and redesignated as § 59-1382 by § 57 of S.L. 1990, ch. 231.

Former § 59-1348 was amended and redesignated as § 59-1385 by § 60 of S.L. 1990, ch. 231.

Former § 59-1349 was amended and redesignated as § 59-1383 by § 58 of S.L. 1990, ch. 231.

59-1350. Deferral of early retirement. — Early retirement may be deferred by a member until the date he would have been eligible for service retirement had he remained an active member.

History.

I.C., § 59-1350, as added by 1990, ch. 231,

§ 38, p. 611; am. 1992, ch. 220, § 8, p. 658; am. 1999, ch. 199, § 4, p. 519.

STATUTORY NOTES

Compiler's Notes.

Former § 59-1350 was amended and redesis-

gnated as § 59-1384 by § 59 of S.L. 1990, ch. 231.

59-1351. Conversion of service retirement or early retirement allowances into optional retirement allowances — Form of optional retirement. — (1) The service retirement allowance, or the early retirement allowance of a member who, at time of retirement, so elects shall be converted into an optional retirement allowance which is the actuarial equivalent of such other allowance. The optional retirement allowance may take one (1) of the forms listed below and shall be in lieu of all other benefits under this chapter except that the provisions of section 59-1361(2), Idaho Code, shall be applicable:

(a) Option 1 provides a reduced retirement allowance payable during the lifetime of the retired member, and a continuation thereafter of such reduced retirement allowance during the lifetime of the member's named contingent annuitant.

(b) Option 2 provides a reduced retirement allowance payable during the lifetime of the retired member, and a continuation thereafter of one-half (1/2) of such reduced retirement allowance during the lifetime of the member's named contingent annuitant.

(c) Option 3, which is available only if the member retires before the date of the social security normal retirement age for that member, provides an increased retirement allowance until such date and a reduced retirement allowance thereafter, the difference between the two (2) amounts approximately equaling the governmental old-age benefit becoming payable at such date as estimated by the board.

(d) Option 4, which is available only if the member retires before the date of the social security normal retirement age for that member, provides either an adjusted option 1 (option 4A) or option 2 (option 4B) retirement allowance until such date and a reduced retirement allowance thereafter, the difference between the two (2) amounts approximately equaling the governmental old-age benefit becoming payable at such date as estimated by the board. The adjusted retirement allowance shall be paid to the retired member during the member's lifetime and the appropriate continuation amount of the adjusted allowance to the member's named contingent annuitant for life thereafter.

(2) Should the named contingent annuitant under option 1 or option 2 either predecease a member retiring on or after October 1, 1992, or waive all survivor benefits pursuant to a domestic retirement order approved under section 59-1320, Idaho Code, upon notification to the board, the member's benefit on the first day of the month following the death of the contingent annuitant or approval of the domestic retirement order, as applicable, will thereafter become an allowance calculated pursuant to section 59-1342 or 59-1346, Idaho Code, whichever was applicable on the date of retirement, in addition to any postretirement allowance adjustments which may have accrued from that time. Should the named contingent annuitant under option 4 either predecease the member, or waive all survivor benefits pursuant to a domestic retirement order approved under section 59-1320, Idaho Code, upon notification to the board, the member's benefit on the first day of the month following the contingent annuitant's death or approval of the domestic retirement order, as applicable will thereafter become the

option 3 allowance to which the member would have been entitled as of the date of the annuitant's death, or approval of the domestic retirement order, as applicable. The benefit changes under this subsection shall be available only to members whose last contribution was made after June 30, 1992.

(3) Option 1 or 2 may not be chosen if initial monthly payments would be less than that amount set forth in, or pursuant to, section 59-1343, Idaho Code.

(4) Application for any optional retirement allowance shall be in writing, duly executed and filed with the board. Such application shall contain all information required by the board, including such proofs of age as are deemed necessary by the board.

(5) A retirement option elected at the time of retirement as provided for in this section may not be changed except by written notice to the retirement board no later than five (5) business days after the receipt of the first retirement allowance.

(6) Not later than one (1) year after the marriage of a retired member, the member may elect option 1, 2 or 4 to become effective ninety (90) days after the date of such election, provided the member's spouse is named as a contingent annuitant, and either:

(a) The member was not married at the time of the member's retirement; or

(b) The member earlier elected option 1, 2, 4A or 4B, having named the member's spouse as contingent annuitant, and said spouse has died or has waived all survivor benefits as provided in subsection (2) of this section.

Should a member make an election under this subsection (6), upon notification to the board, the member's benefit on the first day of the month following the effective date of the election will thereafter become the optional retirement allowance elected, calculated as of the date of retirement pursuant to subsection (1) of this section, in addition to any postretirement allowance adjustments that may have accrued from that time.

History.

1963, ch. 349, Art. 5, § 7, p. 988; am. 1967, ch. 398, § 6, p. 1184; am. 1969, ch. 283, § 6, p. 856; am. 1974, ch. 57, § 8, p. 1118; am. 1976, ch. 97, § 7, p. 403; am. 1981, ch. 10, § 6, p. 16; am. and redesign. and am. 1990, ch. 231, § 39, p. 611; am. 1990, ch. 249, § 3, p. 702; am.

1991, ch. 61, § 5, p. 140; am. 1992, ch. 220, § 9, p. 658; am. 1992, ch. 342, § 4, p. 1037; am. 1994, ch. 209, § 4, p. 658; am. 1999, ch. 160, § 2, p. 437; am. 1999, ch. 199, § 5, p. 519; am. 2004, ch. 328, § 3, p. 979; am. 2009, ch. 144, § 1, p. 433.

STATUTORY NOTES

Amendments.

This section was amended by two 1999 acts which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 160, § 2, in subsection (1) inserted "(1)" following "may take one"; substituted "(2)" for "(1)" following "section 59-1361"; and in subsection (2) substituted "postretirement" for "post retirement" following "in addition to any."

The 1999 amendment, by ch. 199, § 5, in subsection (1) inserted "or" preceding "the

early retirement allowance"; deleted "or the vested retirement allowance" preceding "of a member who,"; inserted "(1)" following "may take one"; and in subsection (2) substituted "postretirement" for "post retirement" following "in addition to any".

The 2009 amendment, by ch. 144, rewrote subsection (3), which formerly read: "Option 1 or 2 may not be chosen if initial payments of less than twenty dollars (\$20.00) per month would result"; in the introductory paragraph in subsection (6), substituted "ninety (90)

days" for "one (1) year"; deleted the last sentence in subsection (6)(b), which read: "The retirement allowance to be converted in such a case is that currently being paid"; and added the last paragraph.

Compiler's Notes.

This section was formerly compiled as § 59-1317.

Former § 59-1351 was amended and redesignated as § 59-1391 by § 61 of S.L. 1990, ch. 231.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 18 of S.L. 1990, ch. 249 declared an emergency. Approved April 5, 1990.

59-1352. Eligibility for disability retirement. — (1) An active member with five (5) years of membership service is eligible for disability retirement.

(2) A police officer member, general member, or a paid firefighter hired on or after July 1, 1993, who is not eligible for service retirement is eligible for disability retirement if disabled, as provided in section 59-1302(12), Idaho Code, on or after the first day of employment as a result of bodily injury or disease from an occupational cause.

(3) Only active members, and inactive members whose date of last contribution as an active member was less than one (1) year prior to the date of application, are eligible to apply for disability retirement.

History.

I.C., § 59-1352, as added by 1990, ch. 231, § 40, p. 611; am. 1993, ch. 178, § 1, p. 458; am. 1993, ch. 251, § 1, p. 875; am. 2000, ch.

68, § 1, p. 152; am. 2001, ch. 138, § 3, p. 498; am. 2006, ch. 148, § 1, p. 462; am. 2007, ch. 44, § 2, p. 105; am. 2009, ch. 144, § 2, p. 433.

STATUTORY NOTES

Amendments.

This section was amended by two 1993 acts which appear to be compatible and have been compiled together.

The 1993 amendment, by ch. 178, § 1, added the subsection designation "(1)" to the first paragraph; and added subsection (2).

The 1993 amendment, by ch. 251, § 1, near the beginning of the first paragraph deleted "who is not eligible for service retirement" following "An active member"; and near the middle of the first paragraph substituted "the member" for "he" preceding "becomes disabled after".

The 2006 amendment, by ch. 148, added subsection (3).

The 2007 amendment, by ch. 44, in subsection (3), substituted "whose date of last contribution" for "whose last day physically on the job," and inserted "the date of" preceding "application."

The 2009 amendment, by ch. 144, in subsection (1), inserted "with five (5) years of membership service" and deleted "if the member becomes disabled after at least five (5) years of membership service" from the end; and, in subsection (2), deleted "the member becomes" following "disability retirement if."

Compiler's Notes.

Former § 59-1352 was amended and redesignated as § 59-1392 by § 62 of S.L. 1990, ch. 231.

59-1352A. Public safety officer permanent disability benefit. — (1) A public safety officer who is ruled by the retirement system to be permanently disabled, as provided in section 59-1302(12), on or after July 1, 2009, as a result of bodily injury or disease sustained in the line of duty is eligible for a one-time permanent disability benefit in the amount of one hundred thousand dollars (\$100,000), which shall be payable as provided in this section to the permanently disabled public safety officer.

(2) Public safety officers who qualify and who seek the benefit under this section shall apply to the retirement board. No benefit shall be payable unless the retirement board determines that:

- (a) The permanent disability occurred in the line of duty;
 - (b) The permanent disability was not caused by the intentional misconduct of the public safety officer or by the public safety officer's intentional infliction of injury; and
 - (c) The public safety officer was not voluntarily intoxicated at the time of the event causing the permanent disability.
- (3) As used in this section, "public safety officer" means an active member of the retirement system who, when injured:
- (a) Was designated as a police officer member under section 59-1303, Idaho Code;
 - (b) Was a firefighter as defined in section 59-1302(16), Idaho Code; or
 - (c) Was a paid firefighter as defined in section 72-1403(A), Idaho Code.
- (4) The benefit payable under this section is as follows:
- (a) Separate from and independent of any benefits payable to the public safety officer under this chapter;
 - (b) Not dependent upon years of service or age of the public safety officer; and
 - (c) Shall not be subject to state income taxes.
- (5) It is the intent of the legislature that this benefit shall be funded solely by public safety officers in perpetuity, and not by an employer, as defined in section 59-1302(15), Idaho Code. Therefore, the costs associated with providing this benefit, as determined by the board, shall be paid solely by the public safety officers.

History.

I.C., § 59-1352A, as added by 2009, ch. 158,
§ 1, p. 476.

STATUTORY NOTES**Cross References.**

Retirement board, § 59-1304.

59-1353. Computation of disability retirement allowances. —

- (1) The base disability retirement allowance of any member shall be equal to an initial service retirement allowance, as defined in section 59-1342, Idaho Code, based upon the years of service which would have been credited to the member had the member continued in eligible employment until service retirement eligibility age, as defined in section 59-1341, Idaho Code. Provided, however, that the total years of credited service shall not exceed the greater of:
- (a) Thirty (30) years; or
 - (b) The member's accrued membership and prior service.
- (2) The annual amount of disability retirement allowance shall equal the excess, if any, of (a) over (b), where:
- (a) Is the base disability retirement allowance provided in subsection (1) of this section; and
 - (b) Is the sum of:
 - (i) Any payment or portion of a payment under the provisions of any workers' compensation law for income benefits because of the same

disability, which payment is not being offset by federal social security disability benefits; and

(ii) The service retirement allowance payable under the provisions of section 59-1342, Idaho Code, where the member is the older of either age sixty-two (62) or the respective service retirement eligibility age provided in section 59-1341, Idaho Code.

(3) If a single payment is made under the provisions of any workers' compensation law and such single payment is in lieu of periodic income payments, for the purposes of this section such single payment shall be converted, pursuant to regulations adopted by the board, to equal periodic payments of the same number of months for which the worker's compensation payment is awarded.

(4) Each adjustment in the payment of a disability retirement allowance due to a change in the amount payable under the provisions of any workers' compensation law shall take effect on the first of the month following the month in which such change is effective.

History.

1963, ch. 349, Art. 6, § 2, p. 988; am. 1974, ch. 57, § 12, p. 1118; am. and redesi.

g. 1990, ch. 231, § 41, p. 611; am. 1991, ch. 61, § 6, p. 140; am. 1993, ch. 251, § 2, p. 875.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1320.

Former § 59-1353 was amended and redesignated as § 59-1393 by § 63 of S.L. 1990, ch. 231.

JUDICIAL DECISIONS

Reduction of Benefits.

The retirement system is statutorily obligated to reduce the amount of a claimant's retirement benefits by the compensation received by him from the state insurance fund. *Adams v. Bingham County Sheriff's Office*, 100 Idaho 490, 600 P.2d 1146 (1979).

Cited in: *Deonier v. State, Pub. Employee Retirement Bd.*, 114 Idaho 721, 760 P.2d 1137 (1988).

59-1354. Time for payment of disability retirement allowance. —

(1) A disability retirement allowance shall become payable to a member on the first of the month next following the later of:

(a) The day salary, sick leave or other temporary compensation benefits terminate under any plan paid for in whole or in part by the employer of the member; or

(b) The day five (5) months after the member becomes eligible for disability retirement.

(2) The disability retirement allowance shall be paid monthly thereafter to, but not including, the first of the month next following the earliest of the date:

(a) Of the retired member's death;

(b) That the retired member elects to receive an early or service retirement allowance;

(c) That the retired member ceases to be disabled, provided however, that

a retired member, who subsequent to becoming a disability retiree serves on any state board or commission that is statutorily required to meet once per month or less and, who is not an employee as defined in this chapter by virtue of such service, shall not be deemed to have ceased to be disabled because of such service; or

(d) That the member waives, in writing, the member’s disability allowance.

(3) When a disability retirement allowance ceases pursuant to subsection (2)(b) of this section, the early or service retirement allowance shall become payable on the first of the month following the date of the last payment of the disability retirement allowance.

(4) Effective the date a disability retirement allowance ceases pursuant to subsections (2)(c) and (d) of this section, the member’s status shall be inactive unless the member again becomes an employee or elects either early or service retirement.

History.

1963, ch. 349, Art. 5, § 3, p. 988; am. 1969, ch. 283, § 4, p. 586; am. 1976, ch. 97, § 5, p. 403; am. 1981, ch. 10, § 4, p. 16; am. and

redesig. 1990, ch. 231, § 42, p. 611; am. 1993, ch. 251, § 3, p. 875; am. 2012, ch. 115, § 1, p. 317.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 115, inserted the proviso in paragraph (2)(c).

Former § 59-1354 was amended and redesignated as § 59-1395 by § 65 of S.L. 1990, ch. 231.

Compiler’s Notes.

This section was formerly compiled as § 59-1313.

Effective Dates.

Section 4 of S.L. 2012, ch. 115 declared an emergency. Approved March 23, 2012.

RESEARCH REFERENCES

A.L.R. — Right to disability benefits as affected by refusal to submit to, or cooperate

in, medical or surgical treatment. 114 A.L.R. Fed. 141.

59-1354A. Members receiving a disability retirement returning to work. — (1) A retired member receiving a disability retirement allowance may return to work under the following conditions:

(a) The retired member must notify the executive director in writing in advance of the return to work; and

(b) The disability retirement allowance shall terminate upon such notification.

(2) The disability retirement allowance of a retired member who returns to work under subsection (1) of this section shall resume if:

(a) The retired member terminates his return to work within one hundred fifty (150) days from the date of the notification required in subsection (1)(a) of this section;

(b) The retired member makes a written request to the board; and

(c) The board determines that the member is disabled, as defined in section 59-1302(12), Idaho Code, and that the member could not success-

fully return to work because of the same disability on which his disability retirement was based.

(3) In making its decision, the board may require the member to submit medical records in support of his request and may require the member to submit to a medical examination. The refusal to submit such records or to submit to such examination shall constitute proof that the member is not disabled. If the board requires a medical examination, any costs associated with such examination must be paid by the member. A disability retirement allowance that is resumed under this section shall be payable the first of the month after the board makes the determination described herein.

(4) If a retired member receiving a disability retirement allowance who returns to work again meets the definition of employee as defined in section 59-1302(14)(A), Idaho Code, eligibility for disability retirement shall be determined in accordance with sections 59-1302(12), 59-1352 and 59-1354, Idaho Code.

(5) For the purposes of this section, "return to work" means being engaged in any activity for which compensation is normally paid but shall not include service on any state board or commission that is statutorily required to meet once per month or less where the retired member is not an employee as defined in this chapter by virtue of such service.

History.

I.C., § 59-1354A, as added by 2010, ch. 101,
§ 1, p. 197; am. 2012, ch. 115, § 2, p. 317.

STATUTORY NOTES

Cross References.

Executive director of PERSI, § 59-1305.

Amendments.

The 2012 amendment, by ch. 115, added "but shall not include service on any state board or commission that is statutorily required to meet once per month or less where

the retired member is not an employee as defined in this chapter by virtue of such service" to the end of subsection (5).

Effective Dates.

Section 4 of S.L. 2012, ch. 115 declared an emergency. Approved March 23, 2012.

59-1355. Postretirement allowance adjustments. — (1) Each retirement allowance payment shall, subject to the provisions of this section, equal the inflation factor for the adjustment year of payment multiplied by the amount of the retirement allowance payment for March of the previous year. During any adjustment year for which the ratio of the consumer price index for the index month of the previous year to the consumer price index for the index month of the second previous year is not more than one hundred one percent (101%), the inflation factor shall be such ratio or ninety-four percent (94%), whichever is greater, which inflation factor shall not be subject to legislative approval. Otherwise the inflation factor during such adjustment year shall be one hundred one percent (101%), except that the board, with legislative approval, may put into effect a greater factor which is no more than such ratio or one hundred six percent (106%), whichever is smaller, if it finds the value of the actuarial assets of the system to be no less than its actuarial liabilities, including those created by the increased factor. The actuarial assets comprise the sum of the actuarial

present value of the amortization payments determined in accordance with the requirements of section 59-1322(5), Idaho Code, plus the amounts determined in paragraphs (e)(ii), (e)(iii), (e)(iv), (e)(v) and (g) of section 59-1322(4), Idaho Code. The actuarial liabilities are as defined in paragraph (e)(i) of section 59-1322(4), Idaho Code. The board's proposed inflation factor for any adjustment year shall be communicated by letter to the legislature by not later than January 15 prior to that year.

(2) During an adjustment year following one in which there was at least one (1) retirement allowance payment but none in March, each retirement allowance payment shall equal the partial factor multiplied by the amount of the monthly retirement allowance payment in the earlier year. The partial factor shall equal 1.000 plus one-twelfth ($1/12$) of the product of the number of months in the earlier adjustment year in which member contributions were not made and the excess, if any, of the inflation factor for the later year over 1.000.

(3) During an adjustment year following one in which there was no retirement allowance payment, each retirement allowance payment shall equal the initial retirement allowance multiplied by the bridging factor between the first day of the month following the member's final contribution and the date of the first retirement allowance payment.

(a) Except as provided in paragraph (b) of this subsection, the bridging factor between any two (2) dates shall be the ratio of the amounts of retirement allowance payable on the two (2) dates for any member who retired on the earlier date immediately following his final contribution.

(b) For any member not making a final contribution subsequent to 1974 whose initial retirement allowance is a minimum allowance provided in section 59-1342(1)(b) or 59-1342(2)(b), Idaho Code, the bridging factor shall be computed as if the member had made his final contribution in 1974.

(4) The consumer price index shall be that for all urban consumers published by the bureau of labor statistics, United States department of labor.

(5) The adjustments provided under this section shall in no event reduce a benefit payment below its initial amount.

(6) An adjustment year shall extend from March through the following February. The index month is October for adjustment years commencing before March, 1990, and is August for subsequent adjustment years.

(7) If, by the forty-fifth day of any regular legislative session, the legislature has not adopted a concurrent resolution rejecting or amending the proposed adjustments of the board allowed in subsections (1) and (8) of this section, such action on the part of the legislature shall constitute legislative approval of the board's adjustments.

(8) Notwithstanding other provisions of this section, the board may grant a postretirement allowance adjustment for any previous year or years up to the full amount of the increase in the consumer price index for that year or those years, as provided in subsection (7) of this section.

History.

I.C., § 59-1319A, as added by 1979, ch. 26, § 3, p. 40; am. 1984, ch. 132, § 3, p. 308; am. 1986, ch. 122, § 1, p. 322; am. 1989, ch. 184,

§ 1, p. 459; am. and redesign. 1990, ch. 231, § 43, p. 611; am. 1990, ch. 249, § 5, p. 702; am. 1996, ch. 79, § 4, p. 252; am. 2009, ch. 144, § 3, p. 433.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 144, in the fourth sentence in subsection (1) inserted "(e)(v)".

igned as § 59-1396 by § 66 of S.L. 1990, ch. 231.

For more on the consumer price index, see <http://www.bls.gov/cpi>.

Compiler's Notes.

This section was formerly compiled as § 59-1319A.

Former § 59-1355 was amended and reded-

Effective Dates.

Section 4 of S.L. 1979, ch. 26 provided that the act should take effect January 1, 1980.

59-1356. Reemployment of retired members. — (1) If an early retired member is reemployed with the same employer within ninety (90) days from retiring, or the early retired member is guaranteed reemployment with the same employer the member shall be considered to have continued in the status of an employee and not to have separated from service. Any retirement allowance payments received by the retired member shall be repaid to the system and the retirement shall be negated. The month of last contribution prior to the negated retirement and the month of initial contribution upon return to reemployment shall be considered consecutive months of contributions in the determination of an appropriate salary base period upon subsequent retirement. A retired member is not considered to have separated from service if he continues performing services for the same employer in any capacity including, but not limited to, independent contractor, leased employee, or temporary services.

(2) Except as provided in subsection (3) of this section, when a retired member meets the definition of an employee as defined in section 59-1302(14)(A)(a), Idaho Code, any benefit payable on behalf of such member shall be suspended and any contributions payable by such member under sections 59-1331 through 59-1334, Idaho Code, shall again commence. The suspended benefit, as adjusted pursuant to section 59-1355, Idaho Code, shall resume upon subsequent retirement, along with a separate allowance computed with respect to only that salary and service credited during the period of reemployment. Any death benefit that becomes payable under the suspended benefit shall be payable under section 59-1361(2), Idaho Code. Any death benefit that becomes payable with respect to salary and service accrued during the period of reemployment shall be payable under section 59-1361(3), Idaho Code, if the member dies during the period of reemployment.

(3) If a retired member, who is receiving a benefit that is not reduced under section 59-1346, Idaho Code, and who has been retired for more than six (6) months, again becomes employed as defined in this section and section 59-1302(14)(A)(b), Idaho Code, as a result of being elected to a public office other than an office held prior to retirement, the retired member may elect to continue receiving benefits and not accrue additional service, in which event no contributions shall be made by the member or employer

during such reemployment and any benefit payable on behalf of such member shall continue.

(4) If a retired school teacher or administrator, who retired on or after age sixty-two (62) years and is receiving a benefit that is not reduced under section 59-1346, Idaho Code, again becomes an employee as defined in this section and section 59-1302(14), Idaho Code, as a result of returning to employment with a school district as provided in section 33-1004H, Idaho Code, the retired member may elect to continue receiving benefits and not accrue additional service, in which event no contributions shall be made by the member during such reemployment and any benefit payable on behalf of such member shall continue. However, the school district shall pay the required employer contribution for that employee to the public employee retirement system.

(5) It is the responsibility of each employer to immediately report to the retirement board the employment of any retired member so that benefit payments can be suspended as provided in this section. If an employer fails to properly report the employment of a retired member and it results in the retirement board making benefit payments that should have been suspended, the employer shall, in addition to paying delinquent employee and employer contributions from the date of eligibility, also be responsible for repaying to the retirement board the benefit payments made to the retired member that should have been suspended, plus interest. The employer may then recoup such payments from the retired member.

(6) For purposes of this section, "same employer" means the employer for which the retired member last worked prior to retirement.

History.

1963, ch. 349, Art. 5, § 8, p. 988; am. 1969, ch. 283, § 7, p. 856; am. 1974, ch. 57, § 9, p. 1118; am. 1981, ch. 10, § 7, p. 16; am. and redesisg. 1990, ch. 231, § 44, p. 611; am. 1996, ch. 243, § 1, p. 773; am. 1999, ch. 198, § 5, p.

508; am. 2006, ch. 151, § 1, p. 466; am. 2006, ch. 185, § 1, p. 585; am. 2007, ch. 44, § 3, p. 105; am. 2007, ch. 45, § 1, p. 114; am. 2007, ch. 131, § 2, p. 387; am. 2008, ch. 27, § 16, p. 54; am. 2012, ch. 169, § 2, p. 449.

STATUTORY NOTES

Amendments.

This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 151, in subsection (2), substituted "be suspended" for "terminate" in the first sentence and "suspended" for "terminated" in the second sentence, and added the last two sentences.

The 2006 amendment, by ch. 185, in subsection (2), added "Except as provided in subsection (3) of this section" at the beginning and deleted "except as provided in subsection (3) of this section" from the end of the first sentence; and rewrote subsection (3), which formerly read: "If a retired member again becomes employed and an employer certifies to the board that the member does not qualify as an employee as defined in this section and section 59-1302(14)(A)(a), Idaho Code, no con-

tributions shall be made by the member or employer during such reemployment and any benefit payable on behalf of such member shall continue."

This section was amended by three 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 44, added the last sentence in subsection (1).

The 2007 amendment, by ch. 45, added subsection [(5)] and redesignated former subsection (4) as subsection [(6)](5).

The 2007 amendment, by ch. 131, added subsection (4) and redesignated former subsection (4) as [(6)](5).

The 2008 amendment, by ch. 27, corrected a subsection designation.

The 2012 amendment, by ch. 169, removed a sunset provision at the end of subsection (4) which read, "After June 30, 2012, this subsec-

tion (4) shall no longer be in force and effect and the other provisions of this section shall be applicable to all employment, including the employment of retirees who were employed under section 33-1004H, Idaho Code, before that date."

Compiler's Notes.

This section was formerly compiled as § 59-1318.

Former § 59-1356 was amended and redesignated as § 59-1397 by § 67 of S.L. 1990, ch. 231.

59-1357. Inactive member eligible for separation benefit. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 59-

1357, as added by 1990, ch. 231, § 45, p. 611, was repealed by S.L. 1996, ch. 243, § 2.

59-1358. Computation of separation benefits. — The separation benefit shall equal the excess, if any, of the member's accumulated contributions at the time the benefit becomes payable over the aggregate of all retirement allowance payments ever made to the member.

History.

1963, ch. 349, Art. 6, § 5, p. 988; am. and redesign. 1990, ch. 231, § 46, p. 611.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 59-1323.

Former § 59-1358 was amended and redesignated as § 59-1398 by § 68 of S.L. 1990, ch. 231.

59-1359. Separation benefits. — (a) The separation benefit, if any, shall become payable upon the written request of an inactive member who has been separated from employment. If the person who received a separation benefit is reemployed or reinstated by the same employer within ninety (90) days or is guaranteed a right to employment or reinstatement with the same employer, the person shall repay to the system any separation benefit paid.

(b) A separation benefit shall automatically be payable three (3) years after a person becomes an inactive member if the inactive member is not a vested member, has accumulated contributions of less than one thousand dollars (\$1,000), and has been separated from employment and is not reemployed or reinstated by the same employer within ninety (90) days.

(c) For purposes of this section, "separated from employment" means the inactive member terminated all employment with the employer. An inactive member is not considered to have separated from employment if he continues performing services for the same employer in any capacity including, but not limited to, independent contractor, leased employee, or temporary services. For purposes of this section, "same employer" means the employer for which the person last worked prior to being separated from employment.

(d) Any member may elect to have eligible rollover distributions paid

directly to a specified eligible retirement plan as required by 26 U.S.C. section 401(a)(31).

History.

1963, ch. 349, Art. 5, § 4, p. 988; am. 1965, ch. 165, § 2, p. 324; am. 1971, ch. 49, § 6, p. 105; am. 1987, ch. 164, § 3, p. 322; am. and redesisg. 1990, ch. 231, § 47, p. 611; am. 1993,

ch. 350, § 7, p. 1295; am. 1996, ch. 243, § 3, p. 773; am. 1998, ch. 193, § 2, p. 697; am. 1999, ch. 199, § 6, p. 519; am. 2006, ch. 152, § 1, p. 467; am. 2007, ch. 44, § 4, p. 105.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 152, in subsection (b), inserted “has accumulated contributions of less than one thousand dollars (\$1,000).”

The 2007 amendment, by ch. 44, added the second sentence in subsection (c).

Compiler's Notes.

This section was formerly compiled as § 59-1314.

Former § 59-1359 was amended and redesignated as § 59-1399 by § 69 of S.L. 1990, ch. 231.

Section 3 of S.L. 1965, ch. 265 read: “The provisions of chapter 13, Title 59, Idaho Code, as herein amended, shall be severable and if any phrase, clause or sentence of any provision of said chapter, as herein amended, is declared to be unconstitutional or the appli-

cability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of this chapter, as herein amended, and the applicability thereof to the state, agency, person or circumstance shall, with respect to all severable matters, not be affected thereby. It is the legislative intent that the provisions of this act be reasonably and liberally construed.”

Effective Dates.

Section 4 of S.L. 1965, ch. 265 declared an emergency. Approved March 18, 1965.

Section 2 of S.L. 1984, ch. 129 declared an emergency. Approved March 31, 1984.

Section 4 of S.L. 1996, ch. 243 declared an emergency. Approved March 14, 1996.

Section 3 of S.L. 1998, ch. 193 declared an emergency. Approved March 20, 1998.

Section 2 of S.L. 2006, ch. 152 declared an emergency. Approved March 22, 2006.

JUDICIAL DECISIONS

Cited in: Jackson v. Minidoka Irrigation Dist., 98 Idaho 330, 563 P.2d 54 (1977).

59-1360. Cessation of membership — Reinstatement. — A person shall cease to be a member when the person's accumulated contributions are paid to the person. After again becoming an employee the member may reinstate previous credited service by repaying to the retirement fund the full amount of all prior accumulated contributions provided such repayment includes payment of interest as determined by the board.

History.

1963, ch. 349, Art. 3, § 2, p. 988; am. 1971, ch. 49, § 4, p. 105; am. 1976, ch. 97, § 2, p. 403; am. 1984, ch. 129, § 1, p. 304; am. and

redesisg. 1990, ch. 231, § 48, p. 611; am. 1991, ch. 17, § 1, p. 37; am. 1993, ch. 350, § 8, p. 1295.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1307.

Effective Dates.

Section 2 of S.L. 1984, ch. 129 declared an emergency. Approved March 31, 1984.

59-1361. Computation of death benefits — Method of payment — Optional death benefit. — (1) The death benefit of an active or inactive

member not vested at time of death shall equal the excess, if any, of the member's accumulated contributions at the time the benefit becomes payable over the aggregate of all benefit payments ever made to the member.

(2) The death benefit of an early or service retired member shall equal the excess, if any, of the member's accumulated contributions at the time the member retired over the aggregate of all retirement allowance payments ever made to the member, the member's named contingent annuitant, and the optional death benefit recipient, if any.

(3) The death benefit of a vested member who, at the time of death is either active, inactive, or a disability retiree, shall equal the excess, if any, of two hundred percent (200%) of the member's accumulated contributions at the time of death over the aggregate of all benefit payments ever made to the member and the optional death benefit recipient, if any.

(4) The death benefit, if any, will be paid to the member's designated beneficiary who is surviving the member at the time the benefit becomes payable. If no beneficiary has been designated or the designated beneficiary has predeceased the member, the death benefit will be paid to the surviving spouse, and if there is no surviving spouse it will be paid in accordance with the laws of descent and distribution of the state of Idaho as they may then be in effect. The designated beneficiary may waive, in writing as required by the board, any death benefit otherwise payable. If the designated beneficiary waives the death benefit, it will be paid as if the designated beneficiary predeceased the member.

(5) When the surviving spouse of a vested member is entitled to a death benefit under subsection (3) of this section, the surviving spouse may elect either an allowance as provided in option 1 under section 59-1351, Idaho Code, or a one (1) time lump sum death benefit payment as provided in subsection (3) of this section. The initial retirement allowance upon which such optional retirement allowance is based shall be calculated as if the member had retired immediately before his death. If the member is not then eligible to receive a service or early retirement allowance, such initial retirement allowance shall equal the actuarial equivalent of the retirement allowance payable when the member would first be eligible for service or early retirement, calculated as if he had separated from service immediately before his death.

History.

1963, ch. 349, Art. 6, § 6, p. 988; am. 1969, ch. 283, § 10, p. 856; am. 1971, ch. 49, § 10, p. 105; am. 1974, ch. 57, § 15, p. 1118; am. 1976, ch. 97, § 9, p. 403; am. 1984, ch. 132, § 5, p. 308; am. 1986, ch. 147, § 4, p. 409; am. and

redesig. 1990, ch. 231, § 49, p. 611; am. 1990, ch. 249, § 6, p. 702; am. 1992, ch. 220, § 10, p. 658; am. 1997, ch. 348, § 1, p. 1034; am. 1999, ch. 160, § 1, p. 437; am. 1999, ch. 199, § 7, p. 519; am. 2004, ch. 211, § 1, p. 637.

STATUTORY NOTES

Amendments.

This section was amended by two 1999 acts which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 160, § 1,

divided the former subsection (1) into the present subsections (1) and (2); added the present subsection (3) and redesignated the former subsections (2) and (3) as the present subsections (4) and (5), respectively; in pres-

ent subsection (1), inserted “not vested at time of death” following “active or inactive member”; substituted “benefits” for “retirement allowance”; deleted “deceased” preceding “member”; at the end of subsection (1) deleted “upon the death of the member, the contingent annuitant, and the optional death benefit recipient, if any”; in subsection (2) inserted “an early or service” following “The death benefit of”; in subsection (4) substituted “If no beneficiary has been designated or the designated beneficiary has predeceased the member, the death benefit” for “; otherwise, it” following “the benefit becomes payable”; in subsection (5) substituted “When the surviving spouse of a vested member is entitled to a death benefit under subsection (3) of this section,” for “Upon the death of a member who has at least five (5) years of credited service

and is: (a) active; (b) inactive; or (c) a disability retired member; his beneficiary, may waive any death benefit otherwise payable and have it paid to the member’s surviving spouse, whereupon”; substituted “(3)” for “(1)” following “provided in subsection”; and substituted “early” for “vested” preceding “retirement”.

The 1999 amendment, by ch. 199, § 7, near the beginning of subsection (3) substituted “a vested member who is” for “a member who has at least five (5) years of credited service and”; and near the end of subsection (3) substituted “service or early retirement” for “vested retirement”.

Compiler’s Notes.

This section was formerly compiled as § 59-1324.

RESEARCH REFERENCES

A.L.R. — Rights in survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or

personal representative of deceased employee. 5 A.L.R.3d 644.

59-1361A. Public safety officer death benefits. — (1) On and after July 1, 2003, in the event a public safety officer dies as the direct and proximate result of a personal injury sustained in the line of duty, a death benefit in the amount of one hundred thousand dollars (\$100,000) shall be payable as provided in this section to the officer’s surviving spouse or, in the event there is no surviving spouse, divided among the officer’s dependent children.

(2) Application for benefits under this chapter shall be made to the retirement board. No benefit shall be payable unless it is established, as determined by the retirement board, that:

- (a) The officer’s death occurred in the line of duty as defined in regulations issued by the United States department of justice pursuant to 42 U.S.C. section 3796, except as modified by the retirement board;
- (b) The death was not caused by the intentional misconduct of the officer or by such officer’s intentional infliction of injury;
- (c) The officer was not voluntarily intoxicated at the time of death; and
- (d) Benefit payments will not be paid to a person whose actions were a substantial contributing factor to the death of the officer.

(3) As used in this section:

- (a) “Dependent child” means a surviving natural or legally adopted child who is under twenty-one (21) years of age at the time of the officer’s death. Benefits to dependent children shall be paid in accordance with the provisions of the Idaho uniform transfers to minors act, as set forth in chapter 8, title 68, Idaho Code; provided that when there are multiple dependent children, the benefit shall be divided equally among them.
- (b) “Public safety officer” means an active member of the retirement system who when injured:

- (i) Was designated as a police officer member under section 59-1303, Idaho Code, and had been treated as such for contribution purposes;
- (ii) Was a “firefighter” as defined in section 59-1302(16), Idaho Code; or
- (iii) Was a “paid firefighter” as defined in section 72-1403(A), Idaho Code.

(4) Benefits payable under this section:

(a) Are separate from and independent of any benefits payable under section 59-1361, Idaho Code;

(b) Are not dependent on years of service or age of the public safety officer; and

(c) Shall not be subject to state income taxes.

(5) The costs of providing this benefit, as determined by the board, shall be paid by the employers of public safety officers as an additional contribution component separate and distinct from all other obligations under this chapter. Such costs will be paid in a manner as determined by the board.

History.

I.C., § 59-1361A, as added by 2003, ch. 238,
§ 1, p. 614.

STATUTORY NOTES

Cross References.

Retirement board, § 59-1304.

the act should take effect on and after July 1,
2003.

Effective Dates.

Section 4 of S.L. 2003, ch. 238 provided that

59-1362. Purchase of active duty service in the armed forces. —

(1) If a member is entitled to reemployment rights related to the member’s active duty service under the uniformed services employment and reemployment rights act of 1994 (USERRA), as amended, any period of that active duty service that is not eligible to be credited as military service under section 59-1302(23), Idaho Code, may be credited as membership service if the member pays employee contributions for that period as required in this section.

(2) The member must pay employee contributions or enter into an agreement to do so and begin making payments within ninety (90) days from the date of reemployment. If the member pays employee contributions or enters into an agreement to do so, the employer will be responsible for paying employer contributions for the same period within thirty (30) days thereafter. Both employee and employer contributions will be based upon compensation the member would have received but for the period of active duty service.

(3) The member may have up to five (5) years to repay employee contributions, with interest accruing only from the date of return from active duty service. If the member terminates employment prior to repaying all the employee contributions related to the eligible period as agreed, membership service will be granted only for the period for which contributions were paid.

(4) All periods of active duty service that do not qualify as “military

service” under section 59-1302(23), Idaho Code, or for purchase of membership service under this section, must be purchased under section 59-1363, Idaho Code.

History. § 1, p. 904; am. 2002, ch. 9, § 1, p. 12; am. I.C., § 59-1362, as added by 2000, ch. 281, 2007, ch. 44, § 5, p. 105.

STATUTORY NOTES

Amendments. reemployment rights act of 1994 (USERRA), The 2007 amendment, by ch. 44, rewrote the section to the extent that a detailed comparison is impracticable. referred to in subsection (1), is codified as 38 U.S.C.S. § 4301 et seq.

Federal References. **Compiler’s Notes.** The abbreviation enclosed in parentheses so appeared in the law as enacted. The uniformed services employment and

- 59-1363. Purchase of membership service.** — (1) Notwithstanding any other provision of this chapter, an active or inactive member who is vested may purchase up to forty-eight (48) months of membership service.
- (2) The cost of purchases under this section shall be the full actuarial costs of the service as determined by the board. The board may provide for payment options, including periodic payments, but no service shall be credited until payment has been made in full. The member shall be solely responsible for the costs of such purchased service, except that an employer may participate in the costs at its option.
- (3) In no event shall any member be allowed to purchase in the aggregate more than forty-eight (48) months of membership service under this section.

History. § 1, p. 1400; am. 2002, ch. 9, § 2, p. 12; am. I.C., § 59-1363, as added by 2000, ch. 440, 2007, ch. 44, § 6, p. 105.

STATUTORY NOTES

Amendments. ing “membership service” and “or any other provision authorizing purchase of membership service” from the end. The 2007 amendment, by ch. 44, in subsection (3), deleted “whether purchased” follow-

59-1365. Voluntary unused sick leave pool. — The board is authorized to establish and administer an unused sick leave pool for the voluntary participation of employer units not eligible to participate in other statutorily created sick leave arrangements. The pool shall be funded entirely by the contributions of participating employer units and the board may charge reasonable administrative expenses for administration. The requirements, rates and parameters for participation in the pool will be set forth by rules of the board.

History. I.C., § 59-1365, as added by 2000, ch. 30, § 1, p. 56.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2000, ch. 30 provided that

the act shall be in full force and effect on and after July 1, 2000.

59-1371. Definitions. — As used in this chapter, each of the terms defined shall have the meaning given in this section or in section 59-1302, Idaho Code, unless a different meaning is clearly required by the context.

(a) "Accumulated teacher member contributions" means the sum of all amounts deducted from the compensation of a teacher member on or before July 1, 1965 and credited to his individual account in the savings annuity savings fund, together with interest credited to said account to such date.

(b) "Board" means the retirement board of the employee system.

(c) "Date of establishment" means July 1, 1967 for school employees.

(d) "Funding agent" means the funding agent of the employee system.

(e) "Prior service" means any period, prior to July 1, 1965, of military service or of employment for the state of Idaho or any political subdivision or other employer as defined by this chapter of each school employee who is an active member or in military service or on leave of absence on the date of establishment.

(f) "Employee system" means the retirement system created by and existing through the provisions of chapter 13, title 59, Idaho Code.

(g) "School employee" means any employee of any school district or any public community college district or Boise State University including each member of the teachers system, subject to the provisions of section 59-1302(14), Idaho Code, but shall not include any person who is an annuitant of the teachers system.

(h) "Teacher member" means a member of the teachers system on July 1, 1967, subject to the provisions of section 59-1302(14), Idaho Code.

(i) "Teachers system" means the retirement system created by and existing through chapter 13, title 33, Idaho Code.

History.

1967, ch. 115, § 1, p. 222; am. and redesign.
1990, ch. 231, § 50, p. 611.

STATUTORY NOTES

Cross References.

Community college districts, § 33-2104.
Retirement board, § 59-1304.

teachers' retirement system enacted by S.L. 1963, ch. 13, §§ 190 to 223 and repealed by S.L. 1967, ch. 115, § 12.

Compiler's Notes.

This section was formerly compiled as § 59-1336.

The savings annuity savings fund, referred to in subsection (a), was a fund within the

The reference to chapter 13, title 33, Idaho Code, in subsection (i), is to that chapter as enacted by S.L. 1963, ch. 13, §§ 190 to 223 and repealed by S.L. 1967, ch. 115, which also enacted this chapter, being chapter 13, title 59, Idaho Code.

59-1372. Transfer of all assets, liabilities, duties, obligations and rights to employee system. — All of the funds, assets, liabilities, duties, obligations and rights of the board of trustees and members of the teachers system shall be transferred to and integrated with the employee system on

July 1, 1967. The board of trustees of the teachers system is by this chapter abolished. Benefits payable to annuitants and beneficiaries of the teachers system shall become the obligation of the employee system on July 1, 1967 and shall be paid in the same amount as established by the teachers system. The funds of the teachers system are by this chapter abolished. Cash on hand in said funds shall be deposited by the state treasurer in the clearing account of the employee system. Evidence of indebtedness arising from invested money of said funds shall be transferred by the custodians thereof to the funding agent. The money and property of said funds shall become the money and property of the employee system.

History.

1967, ch. 115, § 2, p. 222; am. and redesign.
1990, ch. 231, § 51, p. 611.

STATUTORY NOTES**Cross References.**

Clearing account, § 59-1311.

Compiler's Notes.

This section was formerly compiled as § 59-1337.

59-1373. Accumulated teacher member contributions — Remaining contributions — Membership service credit. — Accumulated teacher member contributions, unless previously withdrawn, shall be paid to teacher members prior to January 1, 1968, by the board from the clearing account of the employee system. All remaining contributions shall be considered as accumulated contributions as defined in section 59-1302(3), Idaho Code. Each month of service of any teacher member between July 1, 1965 and July 1, 1967 during which the teacher member was a member of the teachers system shall be deemed to be membership service.

History.

1967, ch. 115, § 4, p. 222; am. 1976, ch. 97, § 11, p. 403; am. and redesign. 1990, ch. 231, § 52, p. 611.

STATUTORY NOTES**Cross References.**

Clearing account, § 59-1311.

Effective Dates.

Section 12 of S. L. 1976, ch. 97, declared an emergency. Approved March 15, 1976.

Compiler's Notes.

This section was formerly compiled as § 59-1339.

59-1374. Employers — Members — Exceptions. — All school districts, public community college districts and Boise State University shall become employers pursuant to the provisions of chapter 13, title 59, Idaho Code, on July 1, 1967, except as herein otherwise provided. School employees shall become members pursuant to the provisions of chapter 13, title 59, Idaho Code, on July 1, 1967, except as herein otherwise provided. Provided, however, that teacher members employed by the agricultural extension

service of the college of agriculture of the University of Idaho shall be deemed to be employees of the state of Idaho notwithstanding the provisions of section 59-1302(14)(B)(e), Idaho Code, and may elect to participate or be excluded as members of the system in accordance with rules of the board. All public charter schools created pursuant to chapter 52, title 33, Idaho Code, shall be employers pursuant to the provisions of chapter 13, title 59, Idaho Code. The Idaho digital learning academy created pursuant to chapter 55, title 33, Idaho Code, shall be an employer pursuant to the provisions of this chapter 13, title 59, Idaho Code. The Idaho bureau of educational services for the deaf and the blind created pursuant to chapter 34, title 33, Idaho Code, shall be an employer pursuant to the provisions of this chapter 13, title 59, Idaho Code.

History.

1967, ch. 115, § 5, p. 222; am. and redesign. 1990, ch. 231, § 53, p. 611; am. 1992, ch. 220,

§ 11, p. 658; am. 1998, ch. 201, § 3, p. 717; am. 2008, ch. 119, § 9, p. 339; am. 2011, ch. 43, § 2, p. 98.

STATUTORY NOTES**Amendments.**

The 2008 amendment, by ch. 119, added the next-to-last sentence.

The 2011 amendment, by ch. 43, added the last sentence.

Effective Dates.

Section 3 of S.L. 2011, ch. 43 declared an emergency retroactively to July 1, 2009. Approved March 8, 2011.

Compiler's Notes.

This section was formerly compiled as § 59-1340.

59-1375. Annuitants — Contribution in lieu of the requirement of six months of membership service. — A person who became an annuitant of the teachers system on or after March 29, 1965, and who had met the requirements for service or disability retirement on the date such person became an annuitant, except for the requirement of six (6) months of membership service, shall be eligible for service or disability retirement on January 1, 1968 by contributing to the employee system pursuant to rules of the board an amount equal to the sum such person would have contributed during six (6) months of membership service computed on the basis of the salary such person received on the date such person became an annuitant. This contribution shall be in lieu of the requirement of six (6) months of membership service. The amount so contributed shall not be included in the computation of disability or service retirement allowance.

History.

1967, ch. 115, § 8, p. 222; am. and redesign. 1990, ch. 231, § 54, p. 611.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 59-1343.

59-1376. Benefits to teacher members not to be less than those paid if system had not been integrated. — Benefits paid teacher members who became eligible for benefits under the employee system shall never be less than the benefits such teacher members would have received as annuitants or that their beneficiaries would have received from the teachers system if the systems had not been integrated.

History.

1967, ch. 115, § 10, p. 222; am. and redesign.
1990, ch. 231, § 55, p. 611.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1345.

Section 14 of S.L. 1967, ch. 115 read: "The provisions of this act shall be severable and if any phrase, clause, sentence, or provision of this act is declared to be unconstitutional or the applicability thereof to any agency, person or circumstance is held invalid, the constitutionality of this act and the applicability

thereof to the agency, person or circumstance shall, with respect to all severable matters, not be affected thereby. It is the legislative intent that the provisions of this act be reasonably and liberally construed."

Effective Dates.

Section 13 of S.L. 1967, ch. 115 provided that the act should take effect July 1, 1967.

59-1377 — 59-1380. [Reserved.]

59-1381. Merger of city systems into state employee system — Definitions. — As used in this chapter, each of the terms defined shall have the meaning given in this section or in section 59-1302, Idaho Code, unless a different meaning is clearly required by the context.

(a) "Board" means the retirement board of the employee system.

(b) "City member" means a person receiving benefits or establishing the right to receive benefits from a city system.

(c) "City system" means the Boise city employee's retirement system and any policeman's retirement system established and operated by virtue of any city ordinance, charter, or pursuant to the provisions of chapter 15, title 50, Idaho Code.

(d) "Employee system" means the retirement system created by and existing through the provisions of chapter 13, title 59, Idaho Code.

(e) "Employer" means a city having a city system.

History.

1971, ch. 26, § 1, p. 68; am. and redesign.
1990, ch. 231, § 56, p. 611.

STATUTORY NOTES

Cross References.

Retirement board, § 59-1304.

Compiler's Notes.

This section was formerly compiled as § 59-1346.

59-1382. City ordinance electing merger — Contract with board.

— Any city having a city system may elect to merge its city system with the employee system by the enactment of an ordinance declaring such intention; the provisions of section 50-1503, Idaho Code, and section 50-1524, Idaho Code, notwithstanding. Thereupon the board of the employee system may upon such terms as are set forth in a contract between the board and employer integrate the city system of the employer into the employee system.

History.

1971, ch. 26, § 2, p. 68; am. and redesign.
1990, ch. 231, § 57, p. 611.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 59-1347.

59-1383. Transfer of assets, liabilities, duties, and rights to state employee system — Governing board of city system abolished. — On its date of establishment all of the funds, assets, liabilities, duties, obligations and rights of the governing board of the city system and of all city members being integrated into the employee system shall be transferred to the employee system. The governing board of such a city system is by this chapter abolished. On and after the date of establishment, benefits payable to annuitants and beneficiaries of such a city system shall become the obligation of the employee system and shall be paid in the same amount as established by such a city system, except that on and after the date of establishment future monthly benefits shall be subject to the provisions of section 59-1356 [59-1355], Idaho Code. The funds of such a city system are by this chapter abolished. The custodian of the fund of such a city system shall transfer all cash on hand in such fund to the state treasurer for deposit in the clearing account of the employee system, and all evidence of indebtedness arising from invested money of said fund to the funding agent as designated by the board. The money and property of such funds shall become the money and property of the employee system.

History.

1971, ch. 26, § 4, p. 68; am. and redesign.
1990, ch. 231, § 58, p. 611.

STATUTORY NOTES**Cross References.**

Clearing account, § 59-1311.
State treasurer, § 67-1201 et seq.

The bracketed insertion in the third sentence was added by the compiler to correct an internal reference change made by S.L. 1990, ch. 231.

Compiler's Notes.

This section was formerly compiled as § 59-1349.

59-1384. Benefits not reduced. — Benefits paid city members or their

beneficiaries shall never be less than the benefits they would have received from the city systems if such systems had not been integrated with the employee system.

History.

1971, ch. 26, § 5, p. 68; am. and redesign.
 1990, ch. 231, § 59, p. 611.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1350.

Section 8 of S.L. 1971, ch. 26 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for

any reason, such declaration shall not affect the validity of remaining portions of this act."

Effective Dates.

Section 9 of S.L. 1971, ch. 26 provided that the act should take effect on and after July 1, 1971.

59-1385. Contributions by employer — Adjustment to equalize benefits payable and assets transferred — Corporate tax by city to pay contributions. — (a) Each employer shall contribute to the cost of benefits under the system, pursuant to section 59-1322, Idaho Code. On the date of establishment and from time to time thereafter, the board shall conduct studies of those benefits payable under section 59-1384, Idaho Code, which are in excess of those otherwise earned in accordance with chapter 13, title 59, Idaho Code. If, for any such employer, such study indicates the value of such benefits exceeds the amount of money and property transferred in accordance with section 59-1383, Idaho Code, said amount being adjusted for interest and for any previous payments in accordance with this section and section 59-1384, Idaho Code, such excess value shall be computed as an additional contribution to be paid by such employer. In the event said amount so adjusted shall exceed said value of such benefits, the excess shall be immediately payable to such employer by the employee system.

(b) Each such employer may levy a special tax on all assessed property within its corporate limits solely for the purpose of paying all or a portion of such contributions.

History.

1971, ch. 26, § 3, p. 68; am. and redesign.
 1990, ch. 231, § 60, p. 611.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1348.

59-1386 — 59-1390. [Reserved.]

59-1391. Definitions. — As used in sections 59-1391 through and including 59-1399, Idaho Code, each of the terms defined shall have the

meaning given in this section or in section 59-1302, Idaho Code, unless a different meaning is clearly required by the context.

(a) "Board" means the retirement board of the employee system.

(b) "Firefighter member" [and "firefighter member"] mean [s] a person or beneficiary who, prior to October 1, 1980, was receiving benefits or establishing the right to receive benefits from the firefighters' retirement fund.

(c) "Firefighters' retirement fund" means the retirement system created by and existing through chapter 14, title 72, Idaho Code.

(d) "Employee system" means the retirement system created and existing through chapter 13, title 59, Idaho Code.

(e) "Employer" means a city or fire district that employs paid firefighters who are participating in the firefighters' retirement fund on October 1, 1980.

(f) "Paid firefighter" [and "paid firefighter"] mean [s] any individual, male or female, excluding office secretaries on the payroll of any city or fire district in the state of Idaho who devotes his or her principal time of employment to the care, operation, maintenance or the requirements of a regularly constituted fire department of such city or fire district in the state of Idaho.

History.

I.C., § 59-1351, as added by 1979, ch. 147, § 1, p. 452; am. 1980, ch. 50, § 39, p. 79; am.

1984, ch. 132, § 8, p. 308; am. and redesign. 1990, ch. 231, § 61, p. 611; am. 1990, ch. 249, § 9, p. 702.

STATUTORY NOTES

Cross References.

Retirement board, § 59-1304.

Amendments.

This section was amended by two 1990 acts, ch. 231, § 61, effective July 1, 1990 and ch. 249, § 9, effective April 5, 1990, which conflict and cannot be cleanly compiled together. The surplus from the blended of the two amendments has been enclosed and corrected with brackets.

The 1990 amendment, by ch. 231, § 61, renumbered this section (§ 59-1351) as § 59-1391 and in subdivision (b) substituted "Firefighter" for "Fireman" and "firefighters" for "firemen's"; in subdivision (c) substituted "Firefighters" for "Firemen's"; in subdivision

(e) substituted "firefighters" for "firemen" and "firefighters" for "firemen" and in subdivision (f) substituted "firefighter" for "firemen".

The 1990 amendment, by ch. 249, § 9, in subdivision (b) added "and 'firefighter member'" following "Fireman member" and in subdivision (d) added "and 'paid firefighter'" following "Paid fireman" and substituted "mean" for "means".

Compiler's Notes.

This section was formerly compiled as § 59-1351.

The bracketed insertions in subsections (b) and (f) were added by the compiler to account for surplus data resultant from the 1990 amendment of the section.

59-1392. Transfer of all assets, liabilities, duties, obligations and rights of the firefighters' retirement fund to the employee system. —

All of the funds, assets, liabilities, duties, obligations and rights provided for by chapter 14, title 72, Idaho Code, shall be transferred to, and integrated with, the employee system on October 1, 1980. Benefits payable to firefighter members shall become the obligation of the employee system on October 1, 1980. Cash on hand in the firefighters' retirement fund shall be deposited to the credit of the public employee retirement fund as provided in section 59-1311, Idaho Code.

History.

§ 2, p. 452; am. and redesign. 1990, ch. 231,
I.C., § 59-1352, as added by 1979, ch. 147, § 62, p. 611.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 59-1352.

59-1393. Contributions. — (1) Employers shall deduct, withhold and remit contributions from the salaries of paid firefighters who were employed as paid firefighters prior to October 1, 1980, as provided by section 72-1431, Idaho Code.

(2) Employers shall make payments required by the provisions of section 72-1432, Idaho Code, for all paid firefighters employed prior to October 1, 1980.

(3) Employers shall deduct, withhold and remit contributions from the salaries of paid firefighters, whose employment begins on or after October 1, 1980, and make employer contributions for such paid firefighters, as provided in chapter 13, title 59, Idaho Code, on and after October 1, 1980.

History.

§ 3, p. 452; am. 1980, ch. 50, § 40, p. 79; am.
I.C., § 59-1353, as added by 1979, ch. 147, and redesign. 1990, ch. 231, § 63, p. 611.

STATUTORY NOTES**Compiler's Notes.**

This section was formerly compiled as § 59-1353.

59-1394. Excess costs — Additional contributions. — (1) In addition to the employee and employer contributions required by chapter 14, title 72, Idaho Code, additional contributions shall be required to fund the provisions of section 59-1397, Idaho Code. These costs shall be borne by employers and by the state of Idaho as hereinafter provided.

(a) Fifty percent (50%) of the gross receipts by the state of the tax on fire insurance premiums, as provided by section 41-402, Idaho Code, is hereby perpetually appropriated to the public employee retirement account [fund] for the purpose of partially funding the benefit payment requirements imposed by the provisions of chapter 14, title 72, Idaho Code.

(b) The board shall conduct studies from time to time of the benefits prescribed by section 59-1397, Idaho Code, to determine the additional contributions required to fund the rights conferred by chapter 14, title 72, Idaho Code, above and beyond the initial contribution from the fire insurance premium tax required by subsection (1)(a) of this section. If such studies indicate the value of the benefits exceeds the required contributions otherwise prescribed, the board shall establish an additional contribution rate necessary to bring the amounts into balance. The cost of such additional contribution shall be borne equally by the employers through additional contributions and the state of Idaho through the fire insurance premium tax. In addition to appropriation of the fire

insurance premium tax contained in subsection (1)(a) of this section, the amount of the gross receipts by the state of the tax on fire insurance premiums, as provided by section 41-402, Idaho Code, necessary to match dollar for dollar the additional contribution required of employers is hereby perpetually appropriated commencing July 1, 1980 to the public employee retirement account [fund] for the purpose of subsection (1)(b) of this section. If the matching funds herein provided equal one hundred percent (100%) of the gross receipts from the fire insurance premium tax, the employers shall contribute the balance of the monies required to meet the required contribution rate. The additional contribution rate from the employers commencing October 1, 1980 shall be ten percent (10%) of the pay period salary of each paid firefighter until next determined by the board.

(2) Nothing herein contained shall prevent the board from contracting with employers to provide a schedule of contributions which will retire any excess cost over a given period of time, not to exceed fifty (50) years. In the event that such agreements are reached, the amount of the fire insurance premium tax necessary to match additional employer contributions is continuously appropriated for that purpose.

History.

I.C., § 59-1357, as added by 1979, ch. 147, § 7, p. 452; am. 1980, ch. 50, § 44, p. 79; am.

and redesign. 1990, ch. 231, § 64, p. 611; am. 1996, ch. 208, § 14, p. 658; am. 1996, ch. 322, § 57, p. 1029.

STATUTORY NOTES

Amendments.

This section was amended by two 1996 acts which appear to be compatible and have been compiled together.

The 1996 amendment, by ch. 208, § 14, in the last sentence of subdivision (1)(b), deleted “, and from the provisions of section 63-2220, Idaho Code” following “by section 63-923(1), Idaho Code”. This last sentence was subsequently deleted in its entirety by ch. 322, § 57, explained below.

The 1996 amendment, by ch. 322, § 57, at the end of subdivision (1)(b), deleted the last sentence which read, “If the additional contribution rate is to be satisfied by an ad valorem tax levy, such levy shall be exempt from the

limitation imposed by section 63-923(1), Idaho Code, and from the provisions of section 63-2220, Idaho Code.”

Compiler's Notes.

This section was formerly compiled as § 59-1357.

The bracketed insertions in paragraphs (1)(a) and (1)(b) were added by the compiler to correct the name of the referenced fund. See § 59-1311.

Effective Dates.

Section 22 of S.L. 1996, ch. 208 declared an emergency and provided that this section should be in effect July 1, 1996. Approved March 12, 1996.

59-1395. Membership rights and duties. — The rights, benefits, memberships, payments, duties and obligations of paid firefighters whose employment begins on or after October 1, 1980, with respect to membership and participation in the employee system shall be governed by the provisions of chapter 13, title 59, Idaho Code.

History.

I.C., § 59-1354, as added by 1979, ch. 147,

§ 4, p. 452; am. 1980, ch. 50, § 41, p. 79; am. and redesign. 1990, ch. 231, § 65, p. 611.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1354.

59-1396. Limit on separation benefit. — (1) When a firefighter member who was employed prior to October 1, 1980, terminates employment and seeks return of his or her accumulated contributions, such contributions shall be returned as provided under the provisions of section 72-1444, Idaho Code.

(2) When a paid firefighter whose employment began on or after October 1, 1980, terminates employment and seeks return of his or her accumulated contributions, such contributions shall be returned as provided by sections 59-1358 and 59-1359, Idaho Code.

History.

I.C., § 59-1355, as added by 1979, ch. 147, § 5, p. 452; am. 1980, ch. 50, § 42, p. 79; am.

and redesar. 1990, ch. 231, § 66, p. 611; am. 2001, ch. 138, § 4, p. 498.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1355.

59-1397. Benefits payable. — The combined rights and benefits of paid firefighters who were employed prior to October 1, 1980, shall not be less than the rights and benefits they would have received from the firefighters' retirement fund, had the fund not been integrated with the employee system.

History.

I.C., § 59-1356, as added by 1979, ch. 147,

§ 6, p. 452; am. 1980, ch. 50, § 43, p. 79; am. and redesar. 1990, ch. 231, § 67, p. 611.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1356.

JUDICIAL DECISIONS

Cited in: Deonier v. State, Pub. Employee Retirement Bd., 114 Idaho 721, 760 P.2d 1137 (1988).

59-1398. Membership in social security. — The provisions of the federal social security system are hereby made applicable to all paid firefighters hired for the first time on or after October 1, 1980.

History.

I.C., § 59-1358, as added by 1979, ch. 147,

§ 8, p. 452; am. 1980, ch. 50, § 45, p. 79; am. and redesar. 1990, ch. 231, § 68, p. 611.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1358.

Provisions relating to the federal social security system are codified at 42 U.S.C.S. § 301 et seq.

Effective Dates.

Section 46 of S.L. 1980, ch. 50 read: "The provisions of this act shall be in full force and effect according to the schedule established by this section.

"(1) An emergency existing therefor, which emergency is hereby declared to exist, section 72-1429R, Idaho Code, as amended by section 30 of this act, and section 72-1432, as amended by section 35 of this act, shall be in full force and effect on and after its passage and approval, and retroactively to October 1, 1979.

"(2) So much of section 72-1428, Idaho Code, as amended by section 23 of this act, as

relates to the requirement that the public employee retirement system board adopt rules and regulations shall be in full force and effect on and after July 1, 1980, but the rules adopted by the board shall have no effect until October 1, 1980, and the balance of section 72-1428, Idaho Code, shall be in full force and effect on and after October 1, 1980.

"(3) So much of section 59-1357(1)(b), Idaho Code, as amended by section 44 of this act, as relates to the appropriation of the tax on fire insurance premiums to the public employee retirement account commencing July 1, 1980, shall be in full force and effect on and after July 1, 1980, and the balance of section 59-1357, Idaho Code, shall be in full force and effect on and after October 1, 1980.

"(4) All other sections of this act shall be in full force and effect on and after October 1, 1980."

59-1399. Cooperation of state insurance fund. — The director of the state insurance fund is hereby authorized and directed to cooperate with and furnish necessary information to the board to accomplish the purposes of this chapter.

History.

1979, ch. 147, § 10, p. 452; am. and redesign. and am. 1990, ch. 231, § 69, p. 611.

STATUTORY NOTES

Cross References.

State insurance fund, § 72-901 et seq.

Compiler's Notes.

This section was formerly compiled as § 59-1359.

Effective Dates.

Section 12 of S.L. 1979, ch. 147 read: "An

emergency existing therefor, which emergency is hereby declared to exist, section 9 [appropriation] of this act shall be in full force and effect on and after its passage and approval."

CHAPTER 14

EMERGENCY INTERIM EXECUTIVE AND JUDICIAL
SUCCESSION ACT

SECTION.

59-1401. Short title.

59-1402. Declaration of policy.

59-1403. Definitions.

59-1404. Additional successors to office of governor.

59-1405. Emergency interim successors for state officers.

59-1406. Enabling authority for emergency interim successors for local offices.

SECTION.

59-1407. Emergency interim successors for local officers.

59-1408. Special emergency judges.

59-1409. Formalities of taking office.

59-1410. Period in which authority may be exercised.

59-1411. Removal of designees.

59-1412. Disputes.

59-1401. Short title. — This act shall be known and may be cited as the “Emergency Interim Executive and Judicial Succession Act.”

History.

1961 (Ex. Sess.), ch. 2, § 1, p. 12.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 1961 (Ex.

Sess.), ch. 2, which is compiled as §§ 59-1401 to 59-1412.

59-1402. Declaration of policy. — Because of the existing possibility of attack upon the United States of unprecedented size and destructiveness, and in order, in the event of such an attack, to assure continuity of government through legally constituted leadership, authority and responsibility in offices of the government of the state and its political subdivisions; to provide for the effective operation of governments during an emergency; and to facilitate the early resumption of functions temporarily suspended, it is found and declared to be necessary to provide for additional officers who can exercise the powers and discharge the duties of governor; to provide for emergency interim succession to governmental offices to this state, and its political subdivisions, in the event the incumbents thereof (and their deputies, assistants or other subordinate officers authorized, pursuant to law, to exercise all of the powers and discharge the duties of such offices — hereinafter referred to as deputy) are unavailable to perform the duties and functions of such offices; and to provide for special emergency judges who can exercise the powers and discharge the duties of judicial offices in the event regular judges are unavailable.

History.

1961 (Ex. Sess.), ch. 2, § 2, p. 12.

STATUTORY NOTES

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

59-1403. Definitions. — Unless otherwise clearly required by the context, as used in this act:

(a) Unavailable means either that a vacancy in office exists and there is no deputy authorized to exercise all of the powers and discharge the duties of the office, or that the lawful incumbent of the office (including any deputy exercising the powers and discharging the duties of an office because of a vacancy) and his duly authorized deputy are absent or unable to exercise the powers and discharge the duties of the office.

(b) Emergency interim successor means a person designated pursuant to this act, in the event the officer is unavailable, to exercise the powers and discharge the duties of an office until a successor is appointed or elected and qualified as may be provided by the constitution, statutes, charters and

ordinances or until the lawful incumbent is able to resume the exercise of the powers and discharge the duties of the office.

(c) Office includes all state and local offices, the powers and duties of which are defined by the constitution, statutes, charters, and ordinances, except the office of governor, and except those in the legislature and the judiciary.

(d) Attack means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by the use of bombs, missiles, shellfire, or atomic, radiological, chemical, bacteriological, or biological means or other weapons or process.

(e) Political subdivision includes counties, cities, towns, villages, townships, districts, authorities, and other public corporations and entities whether organized and existing under charter or general law.

History.

1961 (Ex. Sess.), ch. 2, § 3, p. 12.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1961 (Ex. Sess.), ch. 2, which is compiled as §§ 59-1401 to 59-1412.

The words enclosed in parentheses so appeared in the law as enacted.

59-1404. Additional successors to office of governor. — In the event that the governor, for any of the reasons specified in the constitution, is not able to exercise the powers and discharge the duties of his office, or is unavailable, and in the event the lieutenant governor, president pro tempore of the senate, and the speaker of the house of representatives be for any of the reasons specified in the constitution not able to exercise the powers and discharge the duties of the office of governor, or be unavailable, the secretary of state and state controller shall, in the order named, if the preceding named officers be unavailable, exercise the powers and discharge the duties of the office of governor until a new governor is elected and qualified, or until a preceding named officer becomes available; Provided, however, that no emergency interim successor to the aforementioned offices may serve as governor.

History.

1961 (Ex. Sess.), ch. 2, § 4, p. 12; am. 1994, ch. 180, § 143, p. 420.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.
State controller, § 67-1001 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [Jan-

uary 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 143 of S.L. 1994, ch. 180 became effective January 2, 1995.

59-1405. Emergency interim successors for state officers. — All state officers subject to such regulations as the governor (or other official authorized under the constitution or this act to exercise the powers and discharge the duties of the office of governor) may issue, shall, upon approval of this act, in addition to any deputy authorized pursuant to law to exercise all of the powers and discharge the duties of the office, designate by title emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary designations made pursuant to this act to insure their current status. The officer will designate a sufficient number of such emergency interim successors so that there will be not less than three (3), nor more than seven (7), such deputies or emergency interim successors or any combination thereof, at any time. In the event that any state officer is unavailable following an attack, and in the event his deputy, if any, is also unavailable, the said powers of his office shall be exercised and the said duties of his office shall be discharged by his designated emergency interim successors in the order specified. Such emergency interim successors shall exercise said powers and discharge said duties only until such time as the governor under the constitution or authority other than this act (or other official authorized under the constitution or this act to exercise the powers and discharge the duties of the office of governor) may, where a vacancy exists, appoint a successor to fill the vacancy or until a successor is otherwise appointed, or elected and qualified as provided by law; or an officer or his deputy or a preceding named emergency interim successor becomes available to exercise, or resume the exercise of, the powers and discharge the duties of his office.

History.

1961 (Ex. Sess.), ch. 2, § 5, p. 12.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1961 (Ex. Sess.), ch. 2, which is compiled as §§ 59-1401 to 59-1412.

The words enclosed in parentheses so appeared in the law as enacted.

59-1406. Enabling authority for emergency interim successors for local offices. — With respect to local offices for which the legislative bodies of cities, towns, villages, townships, and counties may enact resolutions or ordinances relative to the manner in which vacancies will be filled or temporary appointments to office made, such legislative bodies are hereby authorized to enact resolutions or ordinances providing for emergency interim successors to offices of the aforementioned governmental units. Such resolutions and ordinances shall not be inconsistent with the provisions of the act.

History.

1961 (Ex. Sess.), ch. 2, § 6, p. 12.

STATUTORY NOTES

Compiler's Notes.

The term "the act" refers to S.L. 1961 (Ex. Sess.), ch. 2, which is compiled as §§ 59-1401 to 59-1412.

59-1407. Emergency interim successors for local officers. — The provisions of this section shall be applicable to officers of political subdivisions (including, but not limited to, cities, towns, villages, townships, and counties, as well as school, fire, power and drainage districts) not included in section 59-1406[, Idaho Code]. Such officers, subject to such regulations as the executive head of the political subdivision may issue, shall upon approval of this act, designate by title (if feasible) or by named person, emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this act to insure their current status. The officer will designate a sufficient number of persons so that there will be not less than three (3), nor more than seven (7), deputies or emergency interim successors or any combination thereof at any time. In the event that any officer of any political subdivision (or his deputy provided for pursuant to law) is unavailable, the powers of the office shall be exercised and duties shall be discharged by his designated emergency interim successors in the order specified. The emergency interim successor shall exercise the powers and discharge the duties of the office to which designated until such time as a vacancy which may exist shall be filled in accordance with the constitution or statutes or until the officer (or his deputy or a preceding emergency interim successor) again becomes available to exercise the powers and discharge the duties of his office.

History.

1961 (Ex. Sess.), ch. 2, § 7, p. 12.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1961 (Ex. Sess.), ch. 2, which is compiled as §§ 59-1401 to 59-1412.

The bracketed insertion at the end of the

first sentence was added by the compiler to conform to the statutory citation style.

The words enclosed in parentheses so appeared in the law as enacted.

59-1408. Special emergency judges. — In the event that any judge of any court is unavailable to exercise the powers and discharge the duties of his office, and in the event no other judge authorized to act in the event of absence, disability or vacancy or no special judge appointed in accordance with the provisions of the constitution or statutes is available to exercise the powers and discharge the duties of such office, the duties of the office shall be discharged and the powers exercised by the special emergency judges hereinafter provided for:

(a) The governor, upon approval of this act, shall designate for each member of the Supreme Court special emergency judges in the number of not less than three (3) nor more than seven (7) for each member of said court and shall specify their order of succession.

(b) The chief justice of the Supreme Court in consultation with the other members of said court, upon approval of this act, shall designate for each court of record except the Supreme Court, special emergency judges in the number of not less than three (3) nor more than seven (7) for each judge of said courts and shall specify their order of succession.

(c) The chief judge of the district court (or the presiding or senior judge of a district in consultation with the other judges of that district where there is more than one judge), upon approval of this act, shall designate not less than three (3) special emergency judges for courts not of record within that district and shall specify their order of succession. Such special emergency judges shall, in the order specified, exercise the powers and discharge the duties of such office in case of the unavailability of the regular judge or judges or persons immediately preceding them in the designation. The designating authority shall review and revise, as necessary, designations made pursuant to this act to insure their current status. Said emergency special judges shall discharge the duties and exercise the powers of such office until such time as a vacancy which may exist shall be filled in accordance with the constitution and statutes or until the regular judge or one preceding the designee in the order of succession becomes available to exercise the powers and discharge the duties of the office.

History.

1961 (Ex. Sess.), ch. 2, § 8, p. 12.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1961 (Ex. Sess.), ch. 2, which is compiled as §§ 59-1401 to 59-1412.

The words enclosed in parentheses so appeared in the law as enacted.

59-1409. Formalities of taking office. — At the time of their designation, emergency interim successors and special emergency judges shall take such oath as may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. Notwithstanding any other provision of law, no person, as a prerequisite to the exercise of the powers of discharge of the duties of an office to which he succeeds, shall be required to comply with any other provision of law relative to taking office.

History.

1961 (Ex. Sess.), ch. 2, § 9, p. 12.

59-1410. Period in which authority may be exercised. — Officials authorized to act as governor pursuant to this act, emergency interim successors and special emergency judges are employed to exercise the powers and discharge the duties of an office as herein authorized only after an attack upon the United States, as defined herein, has occurred. The legislature, by concurrent resolution, may at any time terminate the authority of said emergency interim successors and special emergency

judges to exercise the powers and discharge the duties of office as herein provided.

History.

1961 (Ex. Sess.), ch. 2, § 10, p. 12.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1961 (Ex.

Sess.), ch. 2, which is compiled as §§ 59-1401 to 59-1412.

59-1411. Removal of designees. — Until such time as the persons designated as emergency interim successors or special emergency judges are authorized to exercise the powers and discharge the duties of an office in accordance with this act, including section 59-1410[, Idaho Code,] hereof, said persons shall serve in their designated capacities at the pleasure of the designating authority and may be removed or replaced by said designating authority at any time, with or without cause.

History.

1961 (Ex. Sess.), ch. 2, § 11, p. 12.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1961 (Ex. Sess.), ch. 2, which is compiled as §§ 59-1401 to 59-1412.

The bracketed insertion was added by the compiler to conform to the statutory citation style.

59-1412. Disputes. — Any dispute concerning a question of fact arising under this act with respect to an office in the executive branch of the state government (except a dispute of fact relative to the office of governor) shall be adjudicated by the governor (or other official authorized under the constitution or this act to exercise the powers and discharge the duties of the office of governor) and his decision shall be final.

History.

1961 (Ex. Sess.), ch. 2, § 12, p. 12.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1961 (Ex. Sess.), ch. 2, which is compiled as §§ 59-1401 to 59-1412.

The words enclosed in parentheses so appeared in the law as enacted.

Section 13 of S.L. 1961 (Ex. Sess.), ch. read: "If a part of this act is invalid, all valid parts that are separable from the invalid part re-

main in effect. If a part of this act is invalid in one or more of its applications the part remains in effect in all valid applications that are separable from the invalid applications."

Effective Dates.

Section 14 of S.L. 1961 (Ex. Sess.), ch. 2 declared an emergency. Approved August 9, 1961.

CHAPTER 15

SUPPLEMENTAL RETIREMENT SYSTEM

SECTION.

59-1501. Supplemental retirement system —
Widows of governors, senators
or congressmen.

59-1502. Supplemental retirement fund.

SECTION.

59-1503. Applicability.

59-1504. Supplemental retirement system
limited.

59-1501. Supplemental retirement system — Widows of governors, senators or congressmen. — (1) A supplemental retirement system is hereby created under the management and control of the public employee retirement board, as provided in chapter 13, title 59, Idaho Code, to provide retirement allowance to widows of governors of this state and to widows of United States senators or congressmen of this state, provided the spouse of such widow completed at least four (4) years in one or more of the offices named.

(2) Such widows shall qualify for a retirement allowance upon attaining the age of sixty-five (65) years, and such retirement allowance shall be an annual amount equal to two and one-half per cent (2 1/2%) of the current annual compensation of the office last held by her spouse, multiplied by the number of years he served, payable in equal monthly installments. Provided, however, the annual amount of retirement allowance shall not be less than four thousand eight hundred dollars (\$4,800) or more than ten thousand eight hundred dollars (\$10,800).

(3) The amount of the retirement allowance herein prescribed shall be reduced by the amount of retirement allowance received from any other retirement system operated by the state or federal government, except social security benefits. The retirement board is also authorized to pay the reasonable expenses incurred as a result of a last illness, including funeral expenses, not otherwise paid from any other source.

History.

I.C., § 59-1501, as added by 1975, ch. 193,
§ 1, p. 537.

STATUTORY NOTES**Cross References.**

Public employee retirement board, §§ 59-
1304 and 59-1305.

59-1502. Supplemental retirement fund. — (1) There is hereby established in the state treasury a fund to be known as the supplemental retirement fund. The supplemental retirement fund shall be funded by general fund appropriations, and by income from any other source. All moneys coming into the supplemental retirement fund are hereby perpetually appropriated to the public employee retirement board for disbursement and expenditure as authorized by this chapter, and shall not be considered expenses of the board nor included in its regular departmental budget.

(2) An amount not to exceed five per cent (5%) of the amounts appropri-

ated may be deducted by the public employee retirement board for expenses and deposited to the administrative account of the public employee retirement fund. Moneys in the supplemental retirement fund may be invested at the sole discretion of the public employee retirement board and the earnings therefrom shall be deposited to the credit of the supplemental retirement fund.

History.

I.C., § 59-1502, as added by 1975, ch. 193,
§ 1, p. 537.

STATUTORY NOTES**Cross References.**

Administrative account, § 59-1311.

59-1503. Applicability. — The provisions of this chapter shall be retroactive with respect to eligibility for benefits, but shall be prospective with respect to payment of benefits.

History.

I.C., § 59-1303, as added by 1975, ch. 193,
§ 1, p. 537.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 1975, ch. 193 declared an
emergency. Approved March 28, 1975.

59-1504. Supplemental retirement system limited. — (1) The supplemental retirement system created by chapter 15, title 59, Idaho Code, is hereby limited to those persons who are currently receiving retirement allowances thereunder. No person shall be entitled to receive a retirement allowance under the supplemental retirement system who is not receiving a retirement allowance from the supplemental retirement fund on the effective date of this act.

(2) Should the provisions of paragraph (1) of this section be judged invalid for any reason, with respect to the widow of any former governor, the retirement allowance under the supplemental retirement system shall be calculated as though the governor had elected to receive benefits under option 1 as prescribed by section 59-1317 [59-1351], Idaho Code. The amount that the named contingent annuitant would have received, or is receiving, shall be deducted from the amount of the retirement allowance under the supplemental retirement system as provided by paragraph (3) of section 59-1501, Idaho Code.

History.

I.C., § 59-1504, as added by 1978, ch. 145,
§ 1, p. 326.

STATUTORY NOTES

Compiler's Notes.

The phrase "the effective date of this act" at the end of subsection (1) refers to the effective date of S.L. 1978, ch. 145, which was effective March 17, 1978.

The bracketed insertion in subsection (2) was added by the compiler to account for the

renumbering of the referenced section by S.L. 1990, ch. 231.

Effective Dates.

Section 3 of S.L. 1978, ch. 145 declared an emergency. Approved March 17, 1978.

CHAPTER 16

NONCLASSIFIED STATE OFFICERS AND EMPLOYEES

SECTION.

59-1601. Applicability.

59-1602. Applicability of federal merit system standards.

59-1603. Conformity with classified positions.

59-1604. Credited state service.

SECTION.

59-1605. Sick leave computation.

59-1606. Vacation time.

59-1607. Hours of work and overtime.

59-1608. Leave of absence for organ donation.

59-1601. Applicability. — The provisions of this chapter shall be applicable to those nonclassified officers and employees in the several executive agencies of state government as defined in chapter 53, title 67, Idaho Code, to the officers and employees of any executive department when designated in this chapter and, where specifically indicated, to the officers and employees of the legislative department.

History.

I.C., § 59-1601, as added by 1977, ch. 307, § 16, p. 856; am. 1986, ch. 133, § 9, p. 341.

59-1602. Applicability of federal merit system standards. — Notwithstanding any other provision wherever federal merit system standards are applicable to any nonclassified position, officer or employee, financed in whole or in part by federal funds, rules and regulations shall be established by the board of examiners for executive agencies, or by the legislative council for legislative agencies, to the extent necessary to apply such standards to personnel administration in such grant-in-aid programs.

History.

I.C., § 59-1602, as added by 1977, ch. 307, § 16, p. 856.

STATUTORY NOTES

Cross References.

Legislative council, § 67-427 et seq.

State board of examiners, § 67-2001 et seq.

59-1603. Conformity with classified positions. — (1) To the extent possible, each nonclassified position in the executive department will be paid a salary or wage comparable to classified positions with similar duties,

responsibilities, training, experience and other qualifications. Temporary employees and agricultural inspectors referred to in subsections (n) and (p) of section 67-5303, Idaho Code, shall not be entitled to sick leave accruals provided in section 59-1605, Idaho Code, vacation leave provided in section 59-1606, Idaho Code, nor holiday pay defined in subsection (15) of section 67-5302, Idaho Code, unless contributions are being made to the public employee retirement system in accordance with chapter 13, title 59, Idaho Code, and rules promulgated by the retirement board. Vacation and sick leave accruals, but not holiday pay, shall be awarded retroactively, if necessary, to the date such employees become eligible for retirement system membership.

(2) To the extent possible, each nonclassified position in the legislative department will be paid a salary or wage comparable to classified positions with similar duties, responsibilities, training, experience and other qualifications.

(3) The supreme court shall determine the schedules of salary and compensation for all officers and employees of the judicial department which are not otherwise fixed by law. To the extent possible, the supreme court shall adopt schedules which are compatible with the state's accounting system. The judicial department may also maintain personnel records and files under such system as is ordered by the supreme court.

(4) The state board of education shall determine the schedules of salary and compensation, and prescribe policies for overtime and compensatory time off from duty, for all officers and employees of the state board of education who are not subject to the provisions of chapter 53, title 67, Idaho Code, and which are not otherwise fixed by law. To the extent possible, the state board of education shall adopt schedules and policies which are compatible with the state's accounting system. The state board of education may also maintain personnel records and files under a system of its own, if approved by the state controller.

(5) Members of the legislature, the lieutenant governor, other officers whose salaries are fixed by law, and members of part-time boards, commissions and committees shall be paid according to law.

(6) Any schedule of salary and compensation must be approved by the appointing authority and be communicated to the state controller in writing at least thirty (30) days in advance of the effective date of the schedule.

(7) In addition to salary increases provided by any compensation schedule adopted pursuant to paragraph (6) of this section, nonclassified officers and employees, except those who are elected officials or whose salaries are fixed by law, may be granted an award not to exceed two thousand dollars (\$2,000) in any given fiscal year based upon an affirmative certification of meritorious service. Exceptions to the two thousand dollar (\$2,000) limit provided in this section may be granted under extraordinary circumstances if approved in advance by the state board of examiners. Appointing authorities shall submit a report to the division of financial management and the legislative services office by October 1 on all awards granted in the preceding fiscal year.

(8) In addition to salary increases provided by any compensation schedule, nonclassified officers and employees, except those who are elected

officials or whose salaries are fixed by law, may be granted an award not to exceed two thousand dollars (\$2,000) in any given fiscal year based upon suggestions or recommendations made by the employee which resulted in taxpayer savings as a result of cost savings or greater efficiencies to the department, office or institution or to the state of Idaho in excess of the amount of the award. Exceptions to the two thousand dollar (\$2,000) limit provided in this subsection may be granted in extraordinary circumstances if approved in advance by the state board of examiners. The appointing authority shall as near as practicable utilize the criteria in conformance with rules promulgated by the division of human resources pursuant to section 67-5309D, Idaho Code. Appointing authorities shall submit a report to the division of financial management and the legislative services office by October 1 on all employee suggestion awards granted in the preceding fiscal year. Such report shall include any changes made as a direct result of an employee's suggestion and savings resulting therefrom.

(9) Each appointing authority, including the elective offices in the executive department, the legislative department, the judicial department, and the state board of education and the board of regents, shall comply with all reporting requirements necessary to produce the list of employee positions prescribed by section 67-3519, Idaho Code.

(10) The adjutant general, with the approval of the governor, shall prescribe personnel policies for all officers and employees of the national guard which are not otherwise fixed by law. Such policies will include an employee grievance procedure with appeal to the adjutant general. The adjutant general shall determine schedules of salary and compensation which are, to the extent possible, comparable to the schedules used for federal civil service employees of the national guard and those employees serving in military status. Schedules adopted shall be compatible with the state's accounting system to the extent possible.

(11) In addition to salary increases provided by any compensation schedule, nonclassified officers and employees, except those who are elected officials or whose salaries are fixed by law, may be granted award pay for recruitment or retention purposes based upon affirmative certification of meritorious service after completion of at least six (6) months of service. Appointing authorities shall submit a report to the division of financial management and the legislative services office by October 1 on all such awards granted in the preceding fiscal year.

(12) In addition to salary increases provided by any compensation schedule, nonclassified officers and employees, except those who are elected officials or whose salaries are fixed by law, may be granted other pay as provided in this subsection. Appointing authorities shall submit a report to the division of financial management and the legislative services office by October 1 on all such awards granted in the preceding fiscal year.

(a) Shift differential pay up to twenty-five percent (25%) of hourly rates depending on local market rates in order to attract and retain qualified staff.

(b) Geographic differential pay in areas of the state where recruitment and retention are difficult due to economic conditions and cost of living.

(13) In unusual circumstances, when a distribution has been approved for classified employees pursuant to section 67-5309D, Idaho Code, each appointing authority, including the elective offices in the executive branch, the legislative branch, the judicial branch, and the state board of education and the board of regents of the university of Idaho, may grant nonclassified employees nonmerit pay in the same proportion as received by classified employees in that department or institution. Appointing authorities shall submit a report to the division of financial management and the legislative services office by October 1 on all such awards granted in the preceding fiscal year.

(14) Each appointing authority, shall as nearly as practicable, utilize the criteria for reimbursement of moving expenses in conformance with section 67-5337, Idaho Code, and rules promulgated by the division of human resources pursuant thereto. Appointing authorities shall submit a report to the division of financial management and the legislative services office by October 1 on all moving reimbursements granted in the preceding fiscal year.

(15) Specific pay codes shall be established and maintained in the state controller's office to ensure accurate reporting and monitoring of all pay actions authorized in this section.

History.

I.C., § 59-1603, as added by 1977, ch. 307, § 16, p. 856; am. 1983, ch. 5, § 2, p. 19; am. 1987, ch. 228, § 1, p. 484; am. 1993, ch. 318,

§ 1, p. 1173; am. 1994, ch. 180, § 144, p. 420; am. 1994, ch. 272, § 6, p. 836; am. 1999, ch. 370, § 26, p. 976; am. 2003, ch. 168, § 2, p. 476; am. 2006, ch. 380, § 3, p. 1175.

STATUTORY NOTES

Cross References.

Adjutant general, § 46-111.
Board of regents, § 33-2804.
Division of financial management, § 67-1910.
Division of human resources, § 67-5301.
Legislative services office, § 67-701 et seq.
Retirement board, § 67-1304.
State board of education, § 33-101 et seq.
State board of examiners, § 67-2001 et seq.
State controller, § 67-1001 et seq.

Amendments.

This section was amended by two 1994 acts which appear to be compatible and have been compiled together.

The 1994 amendment, by ch. 180, § 144, at the end of subsection (4) and near the middle of subsection (6) substituted "controller" for "auditor" following "state".

The 1994 amendment, by ch. 272, § 6, deleted the former last sentence of subsection (1) and (2); and in the first sentence of subsection (4) deleted "longevity," preceding "and prescribe policies".

The 2006 amendment, by ch. 380, in subsection (6), deleted "if not the schedule prescribed by section 67-5309C(a), Idaho Code" following "compensation"; in subsection (7),

substituted "an award" for "a lump sum bonus," "two thousand dollars (\$2,000)" for "one thousand dollars (\$1,000)" twice, inserted "under extraordinary circumstances," and added the last sentence; in subsection (8), deleted "holding permanent status" following "employees" near the beginning, substituted "an award" for "a lump sum bonus" in the middle of the first sentence, substituted "two thousand dollars (\$2,000)" for "one thousand dollars (\$1,000)" twice, substituted "award" for "bonus" at the end of the first sentence, inserted "in extraordinary circumstances" in the second sentence, and added the last three sentences; and added subsections (11) through (15).

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 144 of S.L. 1994, ch. 180 became effective January 2, 1995.

59-1604. Credited state service. — (1) For the purposes of payroll, vacation or annual leave, sick leave and other applicable purposes, credited state service shall be earned by:

- (a) The elective officers of the executive department, except the lieutenant governor;
- (b) Nonclassified officers and employees of any department, commission, division, agency or board of the executive department, except for part-time members of boards, commissions and committees;
- (c) Officers and employees of the legislative department, except members of the house of representatives and the senate.

(2) Eligible nonclassified officers and employees shall accrue credited state service at the same rate and under the same conditions as is provided in section 67-5332, Idaho Code, for classified officers and employees.

(3) Members of the legislature, the lieutenant governor, and members of part-time boards, commissions and committees, shall not be eligible for annual leave or sick leave.

(4) Credited state service for those officers and employees identified by section 67-5303(i) [67-5303(j)], Idaho Code, shall be as determined by the state board of education, except no such officer or employee shall be credited with more than two thousand eighty (2,080) hours during any twelve (12) month period.

Any policy and procedures determined by the state board of education must be communicated to the state controller in writing at least one hundred eighty (180) days in advance of the effective date of the policy and procedures.

(5) Service for retirement purposes shall be as provided in chapter 13, title 59, Idaho Code, or in chapter 20, title 1, Idaho Code.

History.

I.C., § 59-1604, as added by 1977, ch. 307, § 16, p. 856; am. 1989, ch. 312, § 1, p. 807;

am. 1994, ch. 180, § 145, p. 420; am. 1994, ch. 272, § 7, p. 836; am. 1996, ch. 79, § 5, p. 252; am. 2000, ch. 121, § 5, p. 262.

STATUTORY NOTES

Cross References.

State board of education, § 33-101 et seq.
State controller, § 67-1001 et seq.

Compiler's Notes.

The bracketed insertion in subsection (4) was added by the compiler to account for the internal redesignation in § 67-5303 by S.L. 1986, ch. 204, § 1.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and

after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 145 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 8 of S.L. 1994, ch. 272 provided that the act shall be in full force and effect on and after June 5, 1994.

OPINIONS OF ATTORNEY GENERAL

This state met the sick pay exclusion requirements of 42 U.S.C.S. § 409 and 20 C.F.R. 404.1051A for the period January 1, 1978, through December 31, 1981, where the

state had legal authority to make payments on account of sickness, the state exercised this authority in accordance with state law by statutorily and administratively establishing

and implementing a mandatory sick leave plan for classified and nonclassified eligible employees, and payments were made on account of sickness pursuant to the sick leave statutes providing benefits in addition to sep-

arately defined salary benefits, rather than pursuant to salary statutes which provide merely for continuation of salary during illnesses. OAG 86-3.

59-1605. Sick leave computation. — (1) Eligible nonclassified officers and employees shall accrue sick leave at the same rate and under the same conditions as is provided in section 67-5333, Idaho Code, for classified officers and employees.

(2) Sick leave shall be taken by nonclassified officers and employees in as nearly the same manner as possible as is provided in section 67-5333, Idaho Code, for classified officers and employees.

(3) The supreme court shall determine the sick leave policies for all officers and employees of the judicial department. To the extent possible, the supreme court shall adopt policies which are compatible with the state's accounting system. Any policy and procedures determined by the supreme court must be communicated to the state controller in writing at least one hundred eighty (180) days in advance of the effective date of the policy and procedures.

(4) The state board of education shall determine the sick leave policies for all officers and employees of the state board of education who are not subject to the provisions of chapter 53, title 67, Idaho Code. To the extent possible, the state board of education shall adopt policies which are compatible with the state's accounting system.

Any policy and procedures determined by the state board of education must be communicated to the state controller in writing at least one hundred eighty (180) days in advance of the effective date of the policy and procedures.

(5) The state board of examiners shall adopt comparative tables and charts to compute sick leave on daily, weekly, bi-weekly, calendar month and annual periods.

History.

I.C., § 59-1605, as added by 1977, ch. 307, § 16, p. 856; am. 1994, ch. 180, § 146, p. 420.

STATUTORY NOTES

Cross References.

State board of education, § 33-101 et seq.

State board of examiners, § 67-2001 et seq.

State controller, § 67-1001 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [Jan-

uary 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 146 of S.L. 1994, ch. 180 became effective January 2, 1995.

OPINIONS OF ATTORNEY GENERAL

This state met the sick pay exclusion requirements of 42 U.S.C.S. § 409 and 20 C.F.R. 404.1051A for the period January 1,

1978, through December 31, 1981, where the state had legal authority to make payments on account of sickness, the state exercised

this authority in accordance with state law by statutorily and administratively establishing and implementing a mandatory sick leave plan for classified and nonclassified eligible employees, and payments were made on account of sickness pursuant to the sick leave

statutes providing benefits in addition to separately defined salary benefits, rather than pursuant to salary statutes which provide merely for continuation of salary during illnesses. OAG 86-3.

59-1606. Vacation time. — (1) Eligible nonclassified officers and employees in the executive department and in the legislative department shall accrue vacation leave and take vacation leave at the same rate and under the same conditions as is provided in section 67-5334, Idaho Code, for classified officers and employees.

(a) The state board of examiners shall adopt comparative tables and charts to compute vacation time on daily, weekly, bi-weekly, calendar month and annual periods.

(2) Eligible nonclassified officers and employees in the judicial department shall accrue vacation leave as determined by order of the supreme court.

Leave policies established by the supreme court must be communicated to the state controller in writing at least one hundred eighty (180) days in advance of the effective date of the policies.

(3) The state board of education shall determine the vacation leave policies for all officers and employees of the state board of education who are not subject to the provisions of chapter 53, title 67, Idaho Code. To the extent possible, the state board of education shall adopt policies which are compatible with the state's accounting system.

Any policy and procedures determined by the state board of education must be communicated to the state controller in writing at least one hundred eighty (180) days in advance of the effective date of the policy and procedures.

History. § 16, p. 856; am. 1994, ch. 180, § 147, p. 420; I.C., § 59-1606, as added by 1977, ch. 307, am. 2006, ch. 380, § 4, p. 1175.

STATUTORY NOTES

Cross References. State board of education, § 33-101 et seq.
State board of examiners, § 67-2001 et seq.
State controller, § 67-1001 et seq.

Amendments. The 2006 amendment, by ch. 380, substituted "section 67-5334" for "sections 67-5334, and 67-5335" in subsection (1).

Effective Dates. Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 147 of S.L. 1994, ch. 180 became effective January 2, 1995.

59-1607. Hours of work and overtime. — (1) It is the policy of the legislature of the state of Idaho that all classified and nonclassified officers and employees of the executive branch of state government shall be treated substantially similar with reference to hours of employment, holidays and vacation leave, except as provided in this chapter. For wage, hour and

working conditions, the supreme court and the legislative council shall prescribe rules for employees of the judicial branch and the legislative branch, respectively. The policy of this state shall not restrict the extension of regular work hour schedules on an overtime basis, which shall be the same for classified and nonclassified employees, in those activities and duties where such extension is necessary and authorized by the appointing authority.

(2) The appointing authority of any department shall determine the necessity for overtime work and shall provide for cash compensation or compensatory time off for such overtime work for eligible classified and nonclassified officers and employees.

(3) Classified and nonclassified officers and employees who fall within one (1) or more of the following categories are ineligible for cash compensation or compensatory time for overtime work:

(a) Elected officials; or

(b) Those included in the definition of section 67-5303(j), Idaho Code.

(4) Classified and nonclassified employees who are designated as executive, as provided in section 67-5302, Idaho Code, and who are not included in the definition of subsection (3) of this section, shall be ineligible for compensatory time or cash compensation for overtime work. Such salaried employees shall report absences in excess of one-half (1/2) day. Unused compensatory time balances in excess of two hundred forty (240) hours as of the date of enactment of this act shall be forfeited on December 31, 2008. Unused compensatory time balances of two hundred forty (240) hours or less shall be forfeited on December 31, 2006. Employees who become executives within their current agency as set forth in section 67-5302(12), Idaho Code, shall have twelve (12) months from the date of this act or of appointment, whichever is later, to use any compensatory time balance. After twelve (12) months, any remaining compensatory time will be forfeited. Compensatory time is not transferable, and shall be forfeited at the time of transfer to another appointing authority or upon separation from state service.

(5) Classified and nonclassified officers and employees who are designated as administrative or professional as provided in the federal fair labor standards act, or who are designated as exempt under any other complete exemption in federal law, and who are not included in the definition of subsection (3) of this section, shall be ineligible for cash compensation for overtime work unless cash payment is authorized by the state board of examiners for overtime accumulated during unusual or emergency situations, but such classified and nonclassified officers and employees shall be allowed compensatory time off from duty for overtime work. Such compensatory time shall be earned and allowed on a one (1) hour for one (1) hour basis, shall not be transferable, and shall be forfeited at the time of transfer to another appointing authority or upon separation from state service. Compensatory time may be accrued and accumulated up to a maximum of two hundred forty (240) hours. Effective with the first pay period in July, 2008 (beginning date June 15, 2008), compensatory time balances in excess of two hundred forty (240) hours will not continue to accrue until the balance is below the maximum. After the last pay period in June, 2009

(ending date June 13, 2009), balances in excess of two hundred forty (240) hours shall be forfeited.

(6) Classified and nonclassified officers and employees who are not designated as executive, administrative or professional as provided in this section, and who are not included in the definition of subsection (3) of this section or who are not designated as exempt under any other complete exemption in federal law, shall be eligible for cash compensation or compensatory time off from duty for overtime work, subject to the restrictions of applicable federal law. Compensatory time off may be provided in lieu of cash compensation at the discretion of the appointing authority after consultation, in advance, with the employee. Compensatory time off shall be paid at the rate of one and one-half (1 1/2) hours for each overtime hour worked. Compensatory time off which has been earned during any one-half (1/2) fiscal year but not taken by the end of the succeeding one-half (1/2) fiscal year, shall be paid in cash on the first payroll following the close of such succeeding one-half (1/2) fiscal year. Compensatory time not taken at the time of transfer to another appointing authority or upon separation from state service shall be liquidated at the time of such transfer or separation by payment in cash.

(7) Notwithstanding the provisions of this section, employees may be paid for overtime work during a disaster or emergency with the approval of the board of examiners.

History.

I.C., § 59-1607, as added by 1977, ch. 307, § 16, p. 856; am. 1983, ch. 87, § 1, p. 182; am. 1986, ch. 133, § 10, p. 341; am. 1990, ch. 368,

§ 1, p. 1005; am. 1996, ch. 120, § 1, p. 434; am. 2004, ch. 299, § 1, p. 833; am. 2006, ch. 380, § 5, p. 1175; am. 2008, ch. 196, § 1, p. 617.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

Amendments.

The 2006 amendment, by ch. 380, substituted “substantially similar” for “equal” in subsection (1); rewrote subsection (4), which read: “Classified and nonclassified employees who are designated as executive, as provided in section 67-5302, Idaho Code, who are designated as exempt under any other complete exemption in federal law, and who are not included in the definition of subsection (3) of this section, shall be ineligible for cash compensation for overtime work, but such classified and nonclassified employees shall be allowed compensatory time off from duty for overtime work. Such compensatory time shall be earned and allowed on a one (1) hour for one (1) hour basis not to exceed two hundred forty (240) hours. Accrued compensatory time off earned under this section shall not be transferable, and shall be forfeited at the time of transfer to another appointing authority or upon separation from state service”; in subsection (5) substituted “the federal fair labor

standards act” for “section 67-5302, Idaho Code, or who are designated as exempt under any other complete exemption in federal law”; in subsection (6), substituted “this section” for “section 67-5302, Idaho Code, who are not designated as exempt under any other complete exemption in federal law.”

The 2008 amendment, by ch. 196, in subsection (1), inserted “the executive branch” in the first sentence and added the second sentence; added the last three sentences in subsection (4); in subsection (5), inserted “or who are designated as exempt under any complete exemption in federal law” in the first sentence and added the last two sentences; in the first sentence in subsection (6), inserted “or who are not designated as exempt under any other complete exemption in federal law”; and added subsection (7).

Federal References.

The federal fair labor standards act, referred to in subsection (5), is codified as 29 U.S.C.S. § 301 et seq.

Compiler's Notes.

The phrase “the date of enactment of this

act" in the third sentence in subsection (4) refers to the date of the enactment of S.L. 2006, ch. 380, which was effective July 1, 2006.

The phrase "the date of this act" in the fifth sentence in subsection (4) refers to the date of S.L. 2008, ch. 196, which was effective July 1, 2008.

Section 17 of S.L. 1977, ch. 307 read:

"(1) Any officer or employee, whether classified or nonclassified, who has accrued and accumulated amounts of vacation leave as of June 30, 1977, which are greater than the limits imposed by the various sections included in this act shall have until June 30, 1978, to utilize such vacation leave. On and after July 1, 1978, any amounts of vacation leave that are in excess of the limits allowed by the various sections included in this act shall be forfeited.

"(2) Any eligible officer or employee, whether classified or nonclassified, who has accrued and accumulated amounts of compensatory time prior to July 1, 1977, shall be allowed to take compensatory time at the rates prevailing during the period such compensatory time was earned, but such compensatory time must be taken prior to July 1, 1978. After July 1, 1977, all compensatory time off earned shall be taken as provided in section 67-5329, Idaho Code."

Effective Dates.

Section 11 of S.L. 1986, ch. 133 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after April 15, 1986."

59-1608. Leave of absence for organ donation. — (1) A full-time nonclassified officer or full-time nonclassified employee shall be granted a leave of absence for the time specified for the following purposes:

(a) Five (5) workdays to serve as a bone marrow donor if the officer or employee provides the appointing authority written verification that the employee is to serve as a bone marrow donor; and

(b) Thirty (30) workdays to serve as a human organ donor if the officer or employee provides the appointing authority written verification that the employee is to serve as a human organ donor.

(2) An officer or employee who is granted a leave of absence pursuant to the provisions of this section shall receive his compensation without interruption during the leave of absence. For purposes of determining longevity, performance, pay advancement and performance awards and for receipt of any benefit that may be affected by a leave of absence, the service of the officer or employee shall be considered uninterrupted by the leave of absence.

(3) The appointing authority shall not penalize an officer or employee for requesting or obtaining a leave of absence pursuant to the provisions of this section.

(4) The leave authorized by this section may be requested by the officer or employee only if the officer or employee is the person who is serving as the donor.

History.

I.C., § 59-1608, as added by 2006, ch. 257, § 2, p. 794.

TITLE 60

PUBLIC PRINTING AND OFFICIAL NOTICES

CHAPTER.

1. CONTRACTS FOR PRINTING — PUBLICATION OF NOTICES, §§ 60-101 — 60-113.

CHAPTER.

2. STATE PUBLICATIONS, §§ 60-201 — 60-203.

CHAPTER 1

CONTRACTS FOR PRINTING — PUBLICATION OF NOTICES

SECTION.

- 60-101. Contracts for state printing — Execution within state — Exception.
- 60-102. Contracts for county printing — Execution within county or state.
- 60-103. Exception in case of excessive charge — Exceptions for lack of production facilities on bids on state work.
- 60-104. Penalty for violation of chapter.
- 60-105. Rates for official notices.
- 60-106. Qualifications of newspapers printing legal notices.
- 60-106A. Electronic publication of legal notices by newspapers.

SECTION.

- 60-107. "Daily newspaper" defined.
- 60-108. Designation of day for publication of weekly notices.
- 60-109. Publication of notices — Number of publications required.
- 60-109A. Publication by first class mail.
- 60-110. Publication of legal notices by radio or television — Restrictions.
- 60-111. Broadcaster to retain copy or transcription.
- 60-112. Proof of publication by radio and television.
- 60-113. Notices affecting interests in real property.

60-101. Contracts for state printing — Execution within state — Exception. — All printing, binding (excluding binding for state supported libraries), engraving, and stationery work executed for or on behalf of the state, and for which the state contracts, or becomes in any way responsible, shall be executed within the state of Idaho, except as provided in section 60-103, Idaho Code. Provided, however, that this section shall not apply to any compilation, publication or codification of the laws of the state of Idaho.

History.

1903, p. 333, § 1; reen. R.C. & C.L., § 1474; C.S., § 2335; I.C.A., § 58-101; am. 1939, ch.

196, § 1, p. 373; am. 1947, ch. 108, § 1, p. 225; am. 1980, ch. 56, § 1, p. 114.

STATUTORY NOTES

Cross References.

Contract to print Supreme Court reports to be let within the state if feasible, § 1-506.
Penalty for violation of chapter, § 60-104.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

Cited in: Harpold v. Doyle, 16 Idaho 671, 102 P. 158 (1908).

60-102. Contracts for county printing — Execution within county or state. — All county printing, binding and stationery work, executed for or on behalf of the several counties throughout the state, for which the said counties contract, or become in any way responsible, shall be executed within the county for which said work is done, when there are practicable facilities within the said county for executing the same, but when it shall become necessary, from want of proper facilities, to execute the work without the said county, then the same shall be executed at some place within the state of Idaho, except as provided in the following section.

History.

1903, p. 333, § 2; reen. R.C. & C.L., § 1475;
C.S., § 2336; I.C.A., § 58-102.

JUDICIAL DECISIONS

Constitutionality.

This section and §§ 60-103 and 60-104 are constitutional and do not violate public policy since statute has nothing to do with letting contracts to either residents or nonresidents of state but only requires that certain work

done for the several counties shall be actually executed within confines of county or state, without any reference to the person who does it. In re Gemmill, 20 Idaho 732, 119 P. 298 (1911).

60-103. Exception in case of excessive charge — Exceptions for lack of production facilities on bids on state work. — (a) Whenever it shall be established that any charge for printing, engraving, binding (excluding binding for state supported libraries) or stationery work is in excess of the charge usually made to private individuals for the same kind and quality of work, then the state or county officer or officers having such work in charge shall have power to have such work done outside of said county or state, but nothing in this chapter shall be construed to oblige any of said officers to accept any unsatisfactory work.

(b) Any work referred to in section 60-101, Idaho Code, and which is to be executed for or on behalf of the state may be executed outside of this state in any case (1) where the execution of such work shall require the use of a technique or process which cannot be performed through the use of physical production facilities located within this state and the use of such technique or process is essential to a necessary function to be served by the printing, binding, engraving or stationery work required; (2) where, after requests for proposals or bids have been made or notice thereof has been given as required by section 67-5718, Idaho Code, as amended, no bid or proposal is made thereon by any person, firm or corporation proposing to execute such work within this state, or (3) where, after requests for proposals or bids have been made or notice thereof given as required by section 67-5718, Idaho Code, the lowest bid from a person, firm or corporation proposing to execute such work within this state is more than ten percent (10%) more than the lowest bid from a person, firm or corporation proposing to execute such work outside this state.

History.

1903, p. 333, § 3; reen. R.C. & C.L., § 1476;

C.S., § 2337; I.C.A., § 58-103; am. 1939, ch. 196, § 2, p. 373; am. 1965, ch. 304, § 1, p.

805; am. 1977, ch. 171, § 1, p. 440; am. 1980, ch. 56, § 2, p. 114.

STATUTORY NOTES

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

Statute Constitutional.

An act requiring that all county printing, binding, and stationery work shall be executed within the county is constitutional and

not an interference with or regulation of commerce. In re Gemmill, 20 Idaho 732, 119 P. 298 (1911).

60-104. Penalty for violation of chapter. — Any state or county officer either as an official, member of a board, or purchasing agent, who violates any of the above provisions, is guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than \$100.00 nor more than \$500.00 for each offense, and shall be liable upon his official bond for the amount of such contract entered into; provided, however, that this section shall not apply and the penalties herein provided for shall not be imposed against any such officer in any case where the person, firm or corporation with whom any such officer contracts or places an order for the performance of any work, as required by section 60-101[, Idaho Code,] or section 60-102[, Idaho Code,] shall have represented in writing to such officer that such work would be executed within a specified county or within this state and such person, firm or corporation shall then permit or cause such work, or any part thereof, to be executed outside of such county or outside of this state contrary to such representation; but any such failure to comply with such representation on the part of any such person, firm or corporation shall render him or it ineligible to bid on or accept, directly or indirectly, any printing, binding, engraving or stationery work for any county or for this state for a period of one (1) year from the date of the contract or order with respect to which such failure occurred.

History.

1903, p. 333, § 6; reen. R.C. & C.L.,

§ 1476a; C.S., § 2338; I.C.A., § 58-104; am. 1965, ch. 304, § 2, p. 805.

STATUTORY NOTES

Compiler’s Notes.

The bracketed insertions near the middle of the section were added by the compiler to conform to the statutory citation style.

Effective Dates.

Section 4 of S.L. 1965, ch. 304 declared an emergency. Approved March 29, 1965.

JUDICIAL DECISIONS

Conviction of Officer Upheld.

A conviction of an officer for unlawfully executing county printing outside the county

was upheld when practicable facilities existed within the county. In re Gemmill, 20 Idaho 732, 119 P. 298 (1911).

60-105. Rates for official notices. — (1) On and after October 1, 2007, the rate to be charged for all official notices required by law to be published in any newspaper in this state, by any state, county, municipal official or other person, shall be as follows: seven and one-half cents (7.5¢) for each pica in a column line for the first insertion and six and one-half cents (6.5¢) for each pica in a column line for each subsequent insertion. For table and figure matter, the rate shall be eight and one-half cents (8.5¢) for each pica in a column line for the first insertion, and six and one-half cents (6.5¢) for each pica in a column line for each subsequent insertion. In the event that a column line ends in a one-half (1/2) pica measurement, the rate for such one-half (1/2) pica shall be one-half (1/2) the rate established for a full pica for the type of matter set forth herein. For purposes of this section, the type used shall not be smaller than seven (7) point nor greater than eight (8) point.

(2) On and after October 1, 2008, the rate to be charged for all official notices required by law to be published in any newspaper in this state, by any state, county, municipal official or other person, shall be as follows: eight cents (8¢) for each pica in a column line for the first insertion and seven cents (7¢) for each pica in a column line for each subsequent insertion. For table and figure matter, the rate shall be nine cents (9¢) for each pica in a column line for the first insertion, and seven cents (7¢) for each pica in a column line for each subsequent insertion. In the event that a column line ends in a one-half (1/2) pica measurement, the rate for such one-half (1/2) pica shall be one-half (1/2) the rate established for a full pica for the type of matter set forth herein. For purposes of this section, the type used shall not be smaller than seven (7) point nor greater than eight (8) point.

History.

1907, p. 27, § 1; reen. R.C. & C.L., § 1477; C.S., § 2339; I.C.A., § 58-105; am. 1951, ch. 29, § 1, p. 41; am. 1955, ch. 135, § 1, p. 274; am. 1971, ch. 35, § 1, p. 80; am. 1980, ch. 124, § 1, p. 280; am. 1981, ch. 131, § 1, p. 220; am.

1984, ch. 224, § 1, p. 541; am. 1988, ch. 214, § 2, p. 404; am. 1996, ch. 427, § 1, p. 1454; am. 1999, ch. 281, § 1, p. 702; am. 1999, ch. 281, § 2, p. 702; am. 2007, ch. 260, § 1, p. 773.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 260, added the subsection (1) designation and, in subsection (1), added "On and after October 1, 2007" at the beginning, substituted "seven and one-half cents (7.5¢)" for "seven cents (7¢)", "six and one-half cents (6.5¢)" for "six cents (6¢)" in two places, and "eight and one-half cents (8.5¢)" for "eight cents (8¢)"; and added subsection (2).

The 2007 amendment of this section by S.L.

2007, ch. 260, § 1 became effective July 1, 2007, without the signature of the governor.

Effective Dates.

Section 5 of S.L. 1999, ch. 281 reads: "Sections 1, 3 and 4 of this act shall be in full force and effect on and after January 1, 2000. Section 2 of this act shall be in full force and effect on and after January 1, 2001."

Section 2 of S.L. 1996, ch. 427 provided that the act shall be in full force and effect on January 1, 1997.

JUDICIAL DECISIONS

Circulation of Newspaper.

County proceedings should be published, if possible, in a medium that will afford the

mass of taxpayers opportunity to become conversant therewith, and contract should not be awarded to paper with a small circulation

merely because its bid is lower than that of one with a much larger circulation. *Lamphere v. Latah County*, 51 Idaho 65, 2 P.2d 317 (1931).

Neither the county which allowed claim, nor claimant, amount of whose claim for publishing annual financial statement was reduced by district court, was entitled to urge as

error conclusion of court that there was no statutory authorization for the publication of statement, where, notwithstanding that conclusion, court did not disallow claim or any part thereof on that ground. *Breding v. Board of County Comm'rs*, 55 Idaho 480, 44 P.2d 290 (1935).

RESEARCH REFERENCES

C.J.S. — 66 C.J.S., Newspapers, §§ 20 to 25.

60-106. Qualifications of newspapers printing legal notices. — No legal notice, advertisement or publication of any kind required or provided by the laws of the state of Idaho, to be published in a newspaper, shall be published or have any force or effect, as such, unless the same be published in a newspaper of general interest published in the state of Idaho, and which newspaper if published weekly, has been continuously and uninterruptedly published in the county during a period of seventy-eight (78) consecutive weeks prior to the first publication of the notice, or advertisement, and, if published daily, has been so published as a daily newspaper in the county during a period of twelve (12) consecutive months prior to the first publication of the notice or advertisement; provided that, notwithstanding any other provision of Idaho laws, the term "newspaper of (or having) general circulation," wherever used in Idaho Code as a qualification of newspapers required to be used for the publication of notice, shall mean a "newspaper," as defined in this section, that is published within the boundaries of the governmental entity wherein the notice is required to be published and which newspaper has the largest paid circulation among all newspapers published in that governmental entity as verified by the sworn statement of average total paid or requested circulation for the preceding twelve (12) months that was filed on the annual statement of ownership, management and circulation with the U.S. postal service on the date immediately preceding the date of the required publication of notice; excepting that, where no newspaper is published within the governmental entity required to publish a notice, the term "newspaper of (or having) general circulation" shall mean the newspaper with the largest paid circulation published within any county in which the governmental entity is located, or the newspaper published nearest to the boundaries of the governmental entity; provided, that nothing in this chapter shall invalidate the publication of such notice or advertisement in any newspaper which has simply changed its name, frequency of publication, suspended publication because of an act of God, or public enemy, fire, strike, or other labor dispute, explosion, flood, government prohibition, government requisition of essential property, preferential government orders, breakdown, legal acts of public authorities or other acts beyond the control of the publisher for a period of not to exceed six (6) months, or changed the place of publication from one part of the county to another part thereof, without breaking the continuity of its regular issues for the required length of time: and, provided

further, that this chapter shall not apply to counties in which no newspaper has been published for the required length of time: provided the term "Newspaper" as used in this section shall apply only to such newspapers of general interest made up of at least four (4) pages of at least five (5) columns each, printed from type matter or from "slugs" cast upon the linotype or intertype or similar "slug-casting" machine, or by the process known as "offset," or stereotyped forms of at least seventeen and three-fourths (17 3/4) inches depth; or, if smaller pages, then comprising an equivalent amount of type matter, and which shall have at least two hundred (200) bona fide subscribers living within the county in which the newspaper is published at regular intervals and, in no case, less frequently than once a week; provided that a newspaper produced by the process known as mimeographing or similar methods shall not be deemed a legal newspaper for publications of any kind. And provided further, that any duly qualified newspaper, as hereinbefore defined, shall not forfeit its standing as such by reason of the fact that it has suspended publication for all or any part of the period during which the United States has been or shall be engaged in the prosecution of any war, or for one (1) year following the date of the proclamation of the President of the United States declaring that this nation is no longer at war, or the termination of a state of war shall be otherwise established. And if any such newspaper shall resume regular publication within one (1) year from the date when the termination of the state of war shall be so established, it shall then be as fully qualified to publish any legal notice, advertisement, or publication required to be published by the laws of the state of Idaho, as if such newspaper had not suspended regular publication during the above mentioned period of time.

No newspaper shall qualify under this section unless the same shall hold a valid second class mailing permit from the United States Post Office. Any violations of the previous requirements of this section concerning printing of newspapers other than in the governmental entity in which a notice or advertisement is required to be printed are hereby excused and any advertisement published in any such newspapers is hereby validated.

History.

1919, ch. 38, § 1, p. 137; C.S., § 2340; I.C.A., § 58-106; am. 1935, ch. 86, § 1, p. 151; am. 1939, ch. 38, § 1, p. 79; am. 1943, ch. 16,

§ 1, p. 44; am. 1947, ch. 140, § 1, p. 337; am. 1969, ch. 132, § 1, p. 414; am. 1994, ch. 192, § 1, p. 621.

STATUTORY NOTES**Cross References.**

Affidavit of proof of publication, Idaho R. Civ. P. 4(g).

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 1969, ch. 132 declared an emergency. Approved March 11, 1969.

JUDICIAL DECISIONS**ANALYSIS**

Constitutionality.

Exceptions to continuous publication.
 Interruption of publication.
 Legislative intent.
 Separate newspapers.

Constitutionality.

This section was judged to be constitutional as it applies to governmental entities, but unconstitutional and void in regard to non-governmental entities because the statute referred only to governmental entities in its title, but referred to non-governmental entities in the statute itself. *Federated Publ'ns, Inc. v. Idaho Bus. Review, Inc.*, 146 Idaho 207, 192 P.3d 1031 (2008), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

Exceptions to Continuous Publication.

By providing no less than twelve individual exceptions to the continuous publication requirement, the Idaho legislature impliedly excluded all other reasons for temporary suspension of publication. *Poison Creek Publ'g, Inc. v. Central Idaho Publ'g, Inc.*, 134 Idaho 426, 3 P.3d 1254 (Ct. App. 2000).

Interruption of Publication.

The "frequency of publication" exception in this section does not encompass a voluntary decision by a weekly newspaper to interrupt its ordinary course of publication for one week so that employees can take a vacation. *Poison Creek Publ'g, Inc. v. Central Idaho Publ'g,*

Inc., 134 Idaho 426, 3 P.3d 1254 (Ct. App. 2000).

Legislative Intent.

Where the clear language of this section mandates that a weekly newspaper publish its weekly edition continuously and uninterrupted for seventy-eight consecutive weeks, and because enforcement of this provision does not lead to palpably absurd results, it must be assumed that the legislature meant what is plainly written in the statute. *Poison Creek Publ'g, Inc. v. Central Idaho Publ'g, Inc.*, 134 Idaho 426, 3 P.3d 1254 (Ct. App. 2000).

Separate Newspapers.

A weekly and daily newspaper published by the same firm, both of which were qualified under the statute to print county proceedings, are not two separate newspapers as respects validity of award of county printing to weekly newspaper, with the understanding that the proceedings would also be printed in the daily newspaper. *Robinson v. Latah County*, 56 Idaho 759, 59 P.2d 19 (1936).

Cited in: *Express Publishing, Inc. v. City of Ketchum*, 114 Idaho 114, 753 P.2d 1260 (1988).

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Newspapers, Periodicals and Press Associations, § 1 et seq.

C.J.S. — 66 C.J.S., Newspapers, § 3.

60-106A. Electronic publication of legal notices by newspapers.

— (1) In addition to the newspaper publication required by section 60-106, Idaho Code, legal notices, advertisements or publications of any kind required or provided by the laws of the state of Idaho to be published in a newspaper may also be electronically published by any newspaper. An electronically published legal notice, advertisement or publication shall have the same legal effect as a legal notice, advertisement or publication that is published in a newspaper.

(2) The following definitions apply to this section:

(a) "Electronically published" means the printing and disseminating of legal notices, advertisements or publications through the use of messaging.

(b) "Messaging" means the use of interconnected electronic networks that automatically transmit data from one (1) computer to another.

(3) The following provisions apply to this section:

(a) Electronic publication may be in addition to the required printed publication in a newspaper; and

(b) Electronic publication may be made by newspapers having electronic publication capability. Nothing in this section shall be construed to require a newspaper to develop and maintain an electronic publication capability; and

(c) Newspapers may not charge an additional rate for electronic publication. Rates for such electronic publication shall be included in the rates for official notices as provided for in section 60-105, Idaho Code; and

(d) Any party placing a legally required public notice in electronic form should, to the greatest extent practicable, provide in such notices the messaging address of the newspaper and, if applicable, that of the person or governmental agency requiring such notice to be published.

History.

I.C., § 60-106A, as added by 1999, ch. 281,
§ 3, p. 702.

STATUTORY NOTES

Effective Dates.

Section 5 of S.L. 1999, ch. 281 reads: "Sections 1, 3 and 4 of this act shall be in full force

and effect on and after January 1, 2000.

Section 2 of this act shall be in full force and effect on and after January 1, 2001."

60-107. "Daily newspaper" defined. — A newspaper published within the state of Idaho for five (5) consecutive days a week, excepting legal holidays, is hereby declared to be a daily newspaper within the meaning of section 60-106[, Idaho Code].

History.

I.C.A., § 58-107, as added by 1933, ch. 154,
§ 1, p. 233; am. 1949, ch. 121, § 1, p. 215.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion was added by the compiler to conform to the statutory citation style.

Effective Dates.

Section 2 of S.L. 1949, ch. 121 declared an emergency. Approved March 3, 1949.

RESEARCH REFERENCES

Am. Jur. — 58 Am. Jur. 2d, Newspapers, Periodicals and Press Associations, § 31.

C.J.S. — 66 C.J.S., Newspapers, §§ 1, 2.

60-108. Designation of day for publication of weekly notices. — A daily newspaper is [as] defined in section 60-107[, Idaho Code,] and published within the state of Idaho, may designate a particular day of the week on which legal notices required by law or by order of any court of competent jurisdiction within the state to be published weekly, will be published, and all notices published in the issue of said newspaper under said date, shall be deemed to have been published once a week in a weekly newspaper.

Provided, however, that the publisher of such newspaper shall, at the head of the editorial column of said paper and in each issue thereof,

announce the day of the week on which such legal notices required by law or by order of any court of competent jurisdiction to be published weekly, will be published.

Provided, further, that when said day of the week falls on a legal holiday on which the said newspaper does not publish a regular issue, all such legal notices intended for publication on that day may be published on the next following or preceding business day, and such notice so published shall be deemed to have been published once per week.

History.

I.C.A., § 58-108, as added by 1933, ch. 154,
§ 2, p. 233; am. 1945, ch. 170, § 1, p. 256.

STATUTORY NOTES

Cross References.

Affidavit of proof of publication, Idaho R.
Civ. P. 4(g).

graph was inserted by the compiler to supply the probable intended term.

The second bracketed insertion in the first paragraph was added by the compiler to conform to the statutory citation style.

Compiler's Notes.

The bracketed word "as" in the first para-

RESEARCH REFERENCES

C.J.S. — 66 C.J.S., Notice, §§ 20 to 27.

60-109. Publication of notices — Number of publications required. — Whenever any law of this state requires publication of any notice or proceeding, said requirement shall be satisfied by publishing the same once each calendar week on the same day of each week for the number of times equal to the number of weeks mentioned in the requirement in any regular issue of a newspaper published on one or more days of each week; or when a specified number of days is required, a ten (10) days' notice shall be satisfied by two (2) such weekly publications, a twenty (20) days' notice by three (3) such publications, and a thirty (30) days' notice by five (5) such publications.

History.

1941, ch. 22, § 1, p. 47; am. 1947, ch. 8, § 1,
p. 8.

STATUTORY NOTES

Cross References.

Affidavit of proof of publication, Idaho
Rules of Civil Procedure, Rule 4(g).

amends section 1 of chapter 22 of the 1941 Session Laws but in the introductory paragraph in the text of section 1 of S.L. 1947, ch. 8 recites that it amends § 7 instead of § 1 of S.L. 1941, ch. 22.

Compiler's Notes.

The title to S.L. 1947, ch. 8 recites that it

60-109A. Publication by first class mail. — Any notice required by law to be published by any regional board, commission, department or authority created by or pursuant to statute; any county, city, school district, special district, any joint district, or other political subdivision of the state

of Idaho may be published by mailing such notice by first class mail, postage prepaid, to the residents of such jurisdiction; provided, however, that publication by mail as provided for herein, shall constitute legal notice only if the cost of mailing, including preparation, materials and postage, is less than the cost of other publication required by law. Proof of such mailing shall be by sworn affidavit of the duly constituted officers of the body publishing the notice.

History.

I.C., § 60-109A, as added by 1978, ch. 167,
§ 1, p. 365.

60-110. Publication of legal notices by radio or television — Restrictions. — Any official of the state of Idaho or any of its political subdivisions who is required by law to publish any notice required by law may supplement publication thereof by radio or television broadcast or both when, in his judgment, the public interest will be served thereby: Provided, that the time, place and nature of such notice only be read or shown with no reference to any person by name then a candidate for political office, and that such broadcasts shall be made only by duly employed personnel of the station from which such broadcasts emanate, and that notices by political subdivisions may be made only by stations situated within the political subdivision of origin of the legal notice, but if no radio or television broadcasting station be situated in the political subdivision of origin, said notice may be broadcast over any radio or television station having general coverage therein.

History.

1963, ch. 299, § 1, p. 788.

60-111. Broadcaster to retain copy or transcription. — Each radio or television station broadcasting any legal notice or notice of event shall for a period of six (6) months subsequent to such broadcast retain at its office a copy or transcription of the text of the notice as actually broadcast which shall be available for public inspection.

History.

1963, ch. 299, § 2, p. 788.

60-112. Proof of publication by radio and television. — Proof of publication of legal notice or notice of event by radio or television broadcast shall be by affidavit of the manager, an assistant manager or a program director of the station broadcasting the same, annexed to a copy or transcription of the text of the notice as actually broadcast, specifying the dates on which, and time of day, the publication was made.

History.

1963, ch. 299, § 3, p. 788.

60-113. Notices affecting interests in real property. — Any published notice that affects or may affect any interest in real property must, in

addition to the legal description, contain either (a) a street address or other information which would be of assistance to the public in ascertaining the location of the property; or (b) the name and telephone number of a person, firm or business office from whom information concerning the location of the property may be obtained; provided, however, that the adequacy of the information not essential to a proper legal description shall not give rise to a jurisdictional defect in a proceeding or action contemplated by the published notice.

History.

I.C., § 60-113, as added by 1985, ch. 169,
§ 1, p. 449; am. 1986, ch. 332, § 1, p. 816.

CHAPTER 2

STATE PUBLICATIONS

SECTION.

60-201. Limitations on publications.
60-202. Required information.

SECTION.

60-203. Prohibited publications.

60-201. Limitations on publications. — The provisions of this chapter shall not apply to constitutional officers, the state colleges and universities, or the legislative and judicial branches of government.

History.

I.C., § 60-201, as added by 1981, ch. 327,
§ 1, p. 686; am. 1994, ch. 1, § 1, p. 3.

60-202. Required information. — The following information shall be included adjacent to the identification of the agency responsible for the publication: date, publication identification or sequence number, and program code of the program responsible for the publication. This information is to be placed and printed in an appropriate manner so as to be easily discernible and readable.

For the purpose of cost accounting and review, any state agency program expending funds for publishing materials shall maintain, for audit purposes, records containing the total cost of printing each publication, whether by the state or on bid, the number printed, the intended audience and a justification.

History.

I.C., § 60-202, as added by 1981, ch. 327,
§ 1, p. 686.

60-203. Prohibited publications. — No state agency shall print or cause to be printed any document intended for use to urge any elector to vote for or against any candidate or proposition on an election ballot or to lobby for or against any proposition or matter having the effect of law being considered by the legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter

having the effect of law being considered by the legislature or any local governing authority.

History.

I.C., § 60-203, as added by 1981, ch. 327,
§ 1, p. 686.

TITLE 61

PUBLIC UTILITY REGULATION

CHAPTER.

1. PUBLIC UTILITIES LAW — APPLICATION AND DEFINITIONS, §§ 61-101 — 61-130.
2. PUBLIC UTILITIES COMMISSION, §§ 61-201 — 61-215.
3. DUTIES OF PUBLIC UTILITIES, §§ 61-301 — 61-339.
4. REPORTS BY PUBLIC UTILITIES, §§ 61-401 — 61-406.
5. POWERS AND DUTIES OF PUBLIC UTILITIES COMMISSION, §§ 61-501 — 61-541.
6. PROCEDURE BEFORE COMMISSION AND IN COURTS, §§ 61-601 — 61-642.
7. PUBLIC UTILITIES LAW — ENFORCEMENT, PENALTIES, AND INTERPRETATION, §§ 61-701 — 61-714.
8. STRAY CURRENT AND VOLTAGE REMEDIATION ACT, §§ 61-801 — 61-809.

CHAPTER.

9. ISSUANCE OF SECURITIES BY PUBLIC UTILITIES, §§ 61-901 — 61-909.
10. SPECIAL REGULATORY FEE, §§ 61-1001 — 61-1009.
11. AIR CARRIER ACT, §§ 61-1101 — 61-1119.
12. PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL, §§ 61-1201 — 61-1207.
13. TELECOMMUNICATIONS RELAY SERVICES, §§ 61-1301 — 61-1306.
14. [RESERVED.]
15. ENERGY COST RECOVERY BONDS, §§ 61-1501 — 61-1508.
16. UTILITY COST REDUCTION BONDS, §§ 61-1601 — 61-1611.
17. SITING OF CERTAIN ELECTRICAL TRANSMISSION FACILITIES, §§ 61-1701 — 61-1709.

CHAPTER 1

PUBLIC UTILITIES LAW — APPLICATION AND DEFINITIONS

SECTION.

- 61-101. Title and application.
- 61-102. Commission.
- 61-103. Commissioner.
- 61-104. Corporation.
- 61-105. Person.
- 61-106. Transportation of persons.
- 61-107. Transportation of property.
- 61-108. Street railroad.
- 61-109. Street railroad corporation.
- 61-110. Railroad.
- 61-111. Railroad corporation.
- 61-112. Express corporation.
- 61-113. Common carrier.
- 61-114. Pipeline.
- 61-115. Pipeline corporation.

SECTION.

- 61-116. Gas plant.
- 61-117. Gas corporation.
- 61-118. Electric plant.
- 61-119. Electrical corporation.
- 61-120. Telephone line.
- 61-121. Telephone corporation — Telecommunication services.
- 61-122, 61-123. [Repealed.]
- 61-124. Water system.
- 61-125. Water corporation.
- 61-126. Vessel. [Repealed.]
- 61-127. Wharfinger. [Repealed.]
- 61-128. Warehouseman. [Repealed.]
- 61-129. Public utility.
- 61-130. Reference to other statutes and laws.

61-101. Title and application. — This act shall be known as “The Public Utilities Law” and shall apply to the public utilities and public services herein described and to the commission herein referred to.

History.

1913, ch. 61, § 1, p. 247; reen. C.L. 106:1;
C.S., § 2368; I.C.A., § 59-101.

STATUTORY NOTES

Cross References.

Fire protection districts, exemption from tax provisions of act governing, § 31-1425.

Public utility, definition, § 61-129.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121,

61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

ANALYSIS

Appeal of disallowed claim.
City's right to take over plant.
Constitutionality.
Legislature can impose tax.
Rate-fixing statutes.

Appeal of Disallowed Claim.

A claim allowed in part and denied in part is equivalent to a decision on the amount allowed, as representing the value of the services, and a failure to bring an action within six months after the rejection will preclude recovery of the disallowed portion. *Boise Valley Traction Co. v. Ada County*, 38 Idaho 350, 222 P. 1035 (1923).

City's Right to Take Over Plant.

When the power company purchased the system and franchise of the River Company, it obtained certain equipment and took the property burdened with the condition that the city could exercise its right to purchase according to the terms of the franchise. *Boise City v. Idaho Power Co.*, 37 Idaho 798, 220 P. 483 (1923).

Constitutionality.

This is a comprehensive act passed under the police power which is valid as against the following objections: 1. That the legislature had no power to grant to the public utilities commission power to restrict competition; 2. That legislative authority is delegated to said

commission in an unconstitutional manner; 3. That said commission is a judicial body established in contravention of Idaho Const., Art. V, § 2. *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083 (1914).

Legislature Can Impose Tax.

The legislature has the right to impose a business tax for revenue and the mere fact that in some cases the act may work a hardship is not grounds for declaring it unconstitutional, unless it is so unreasonable as to be confiscatory and oppressive in its general operation upon the business. *Smallwood v. Jeter*, 42 Idaho 169, 244 P. 149 (1926).

Rate-Fixing Statutes.

The rate-fixing statutes applicable to individuals and private corporations exclude municipally owned utilities from their operation. *Snake River Homebuilders Ass'n v. City of Caldwell*, 101 Idaho 47, 607 P.2d 1321 (1980).

Cited in: *In re Garrett Transf. & Storage Co.*, 53 Idaho 200, 23 P.2d 739 (1933); *In re Pacific Tel. & Tel. Co.*, 71 Idaho 476, 233 P.2d 1024 (1951); *Village of Lapwai v. Alligier*, 78 Idaho 124, 299 P.2d 475 (1956).

RESEARCH REFERENCES

A.L.R. — Racial or religious discrimination in furnishing of public utilities, services or facilities. 53 A.L.R.3d 1027.

Abandoned plant, public utility's right to recover cost of nuclear power plants abandoned before completion. 83 A.L.R.4th 183.

Incidental provision of utility services, by party not in that business, as subject to regulation by state regulatory authority. 85 A.L.R.4th 280.

61-102. Commission. — The term "commission" when used in this act means the Idaho public utilities commission.

History.

1913, ch. 61, § 2a, p. 247; reen. 1915, ch. 62, § 1a, p. 151; reen. 1917, ch. 128, § 1, subd. a,

p. 430; reen. C.L. 106:2; C.S., § 2369; I.C.A., § 59-102; am. 1951, ch. 100, § 1, p. 225.

STATUTORY NOTES

Cross References.

Definition for air carrier act, § 61-1102.
Public utilities commission, creation, § 61-201.
Public utilities commission, duties, § 61-301 et seq.

61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch.

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Utilities, §§ 143 to 149.

C.J.S. — 73B C.J.S., Public Utilities, § 148 et seq.

61-103. Commissioner. — The term "commissioner" when used in this act means one of the members of the commission.

History.

1913, ch. 61, § 2b, p. 247; reen. 1915, ch. 62, § 1b, p. 151; reen. 1917, ch. 128, § 1, subd. b,

p. 430; reen. C.L. 106:3; C.S., § 2370; I.C.A., § 59-103.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-104. Corporation. — The term "corporation" when used in this act includes a corporation, a company, an association and a joint stock association, but does not include a municipal corporation, or mutual nonprofit or cooperative gas, electrical, water or telephone corporation or any other public utility organized and operated for service at cost and not for profit, whether inside or outside the limits of incorporated cities, towns or villages.

History.

1913, ch. 61, § 2c, p. 247; am. 1915, ch. 62, § 1c, p. 151; am. 1917, ch. 128, § 1, subd. c, p.

430; reen. C.L. 106:4; C.S., § 2371; I.C.A., § 59-104.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

ANALYSIS

Design to evade prohibitions.
Municipally ordered removal of equipment.
Municipally-owned utilities.
Nonprofit cooperative.

Design to Evade Prohibitions.

The creation of the cooperative, its contracts for the purchase of gas and for the sale of its bonds to raise funds for the construction, operation and maintenance of a gas distribution system, and the ordinance of the city of Idaho Falls granting an exclusive franchise for thirty years to the cooperative with the contract provided for by such ordinance were all parts of a plan and design devised to enable the city of Idaho Falls to evade and circumvent the limitations and prohibitions of the constitution and statutes and to exercise powers not granted to a municipality. *O'Bryant v. City of Idaho Falls*, 78 Idaho 313, 303 P.2d 672 (1956).

Municipally Ordered Removal of Equipment.

Unincorporated village was not required to obtain consent of public utilities commission before requiring removal of pipes and apparatus of a private water company, though water company as a public utility was subject to regulation by the commission, since municipalities retain the right to control and maintain their streets and alleys. *Village of Lapwai v. Alligier*, 78 Idaho 124, 299 P.2d 475 (1956).

61-105. Person. — The term "person" when used in this act includes an individual, a firm and a copartnership.

History.

1913, ch. 61, § 2d, p. 247; reen. 1915, ch. 62, § 1d, p. 151; reen. 1917, ch. 128, § 1,

Municipally-Owned Utilities.

Municipally-owned utilities are not under jurisdiction of public utilities commission and persons affected thereby may sue in court to test reasonableness of rates. *Kiefer v. City of Idaho Falls*, 49 Idaho 458, 289 P. 81 (1930).

Nonprofit Cooperative.

A nonprofit cooperative corporation organized to serve electric current to its members is not a public service corporation and is not required to serve anyone but its members. *Sutton v. Hunziker*, 75 Idaho 395, 272 P.2d 1012 (1954).

Rural electrical nonprofit cooperative corporations are not public utilities and are, therefore, not subject to the jurisdiction of the public utilities commission. *Clearwater Power Co. v. Washington Water Power Co.*, 78 Idaho 150, 299 P.2d 484 (1956).

Cited in: *City of Idaho Falls v. Pfost*, 53 Idaho 247, 23 P.2d 245 (1933); *Filer Mut. Tel. Co. v. Idaho State Tax Comm'n*, 76 Idaho 256, 281 P.2d 478 (1955); *Unity Light & Power Co. v. City of Burley*, 83 Idaho 285, 361 P.2d 788 (1961); *Snake River Homebuilders Ass'n v. City of Caldwell*, 101 Idaho 47, 607 P.2d 1321 (1980).

subd. d, p. 430; reen. C.L. 106:5; C.S., § 2372; I.C.A., § 59-105.

STATUTORY NOTES

Cross References.

"Person" defined for air carrier act, § 61-1102.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121,

61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-106. Transportation of persons. — The term "transportation of persons" when used in this act includes every service in connection with or incidental to the safety, comfort, or convenience of the person transported and the receipt, carriage and delivery of such person and his baggage.

History.

1913, ch. 61, § 2e, p. 247; am. 1915, ch. 62, § 1e, p. 151; am. 1917, ch. 128, § 1, subd. e, p.

430; reen. C.L. 106:6; C.S., § 2373; I.C.A., § 59-106.

STATUTORY NOTES**Cross References.**

Aeronautical Administration Act of 1970, §§ 21-131 to 21-150.

Air carrier act, definition of transportation, § 61-1102.

School transportation, §§ 33-1501 to 33-1512.

61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch.

61-107. Transportation of property. — The term "transportation of property" when used in this act includes every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and handling, and the transmission of credit by express corporations.

History.

1913, ch. 61, § 2f, p. 247; reen. 1915, ch. 62, § 1f, p. 151; am. 1917, ch. 128, § 1, subd. f, p.

430; compiled and reen. C.L. 106:7; C.S., § 2374; I.C.A., § 59-107.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-108. Street railroad. — The term "street railroad" when used in this act includes every railway and each and every branch or extension thereof, by whatsoever power operated, being mainly upon, along, above or below any street, avenue, road, highway, bridge or public place within any city or county, or city or town, together with all real estate, fixtures and personal property of every kind and description used in connection therewith, owned, controlled, operated or managed for public use in the transportation of persons or property; but the term "street railroad" when used in this act shall not include a railway constituting or used as a part of a commercial or interurban railway.

History.

1913, ch. 61, § 2g, p. 247; am. 1915, ch. 62, § 1g, p. 151; am. 1917, ch. 128, § 1, subd. g, p.

430; compiled and reen. C.L. 106:8; C.S., § 2375; I.C.A., § 59-108.

STATUTORY NOTES**Cross References.**

Certificates of convenience and necessity, §§ 61-526 to 61-529.

Consent of local authorities required for construction in cities, Idaho Const., Art. XI, § 11.

Intersection with other railroads, § 62-204.
 Power of public utility commission to require adequate service, § 61-509.
 Rates and charges, § 61-326.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121,

61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

Cited in: In re Garrett Transf. & Storage Co., 53 Idaho 200, 23 P.2d 739 (1933); Burlington Out Now v. Burlington N., Inc., 96 Idaho 594, 532 P.2d 936 (1975).

61-109. Street railroad corporation. — The term "street railroad corporation" when used in this act includes every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating or managing any street railroad for compensation within this state.

History.

1913, ch. 61, § 2h, p. 247; reen. 1915, ch. 62, § 1h, p. 152; reen. 1917, ch. 128, § 1,

subd. h, p. 430; reen. C.L. 106:9; C.S., § 2376; I.C.A., § 59-109.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

ANALYSIS

Common carriers.
 Legislative authority.

Common Carriers.

The constitution gives the legislature exclusive control of "railroad companies" and makes them "common carriers" and subject to legislative control. Codd v. McGoldrick Lumber Co., 46 Idaho 256, 267 P. 439 (1928).

nate those carriers or utilities which must secure from the public utilities commission a certificate of convenience and necessity before beginning operations. In re Garrett Transf. & Storage Co., 53 Idaho 200, 23 P.2d 739 (1933).

Legislative Authority.

The legislature has the authority to designate

61-110. Railroad. — The term "railroad" when used in this act includes every commercial, interurban and other railway other than a street railroad, and each and every branch or extension thereof, by whatsoever power operated, together with all tracks, bridges, trestles, rights of way, subways, stations, tunnels, depots, union depots, ferries, yards, grounds, terminals, terminal facilities, structures and equipment, and all other real estate, fixtures and personal property of every kind used in connection therewith, owned, controlled, operated or managed for public use in the transportation of persons or property.

History.

1913, ch. 61, § 2i, p. 247; reen. 1915, ch. 62, § 1i, p. 152; reen. 1917, ch. 128, § 1, subd. i,

p. 430; reen. C.L. 106:10; C.S., § 2377; I.C.A., § 59-110.

STATUTORY NOTES**Cross References.**

Assessment for taxation, § 63-701 et seq.
Railroads, § 62-101 et seq.

61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121,

JUDICIAL DECISIONS**Common Carrier.**

Where a railroad holds out to the public that it will operate as a common carrier, and exercises the right of eminent domain, it cannot contend that it is not a common carrier because it has never operated as such. *Codd v. McGoldrick Lumber Co.*, 46 Idaho 256, 267 P. 439 (1928).

Mere exercise of right of eminent domain by

logging railroad did not make it a public highway or common carrier. *Codd v. McGoldrick Lumber Co.*, 48 Idaho 1, 279 P. 298 (1929).

Cited in: *Burlington Out Now v. Burlington N., Inc.*, 96 Idaho 594, 532 P.2d 936 (1975).

61-111. Railroad corporation. — The term "railroad corporation" when used in this act includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any railroad for compensation within this state.

History.

1913, ch. 61, § 2j, p. 247; reen. 1915, ch. 62, § 1j, p. 152; reen. 1917, ch. 128, § 1, subd. j,

p. 430; reen. C.L. 106:11; C.S., § 2378; I.C.A., § 59-111.

STATUTORY NOTES**Cross References.**

Powers and duties of railroad corporation, § 62-104.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121,

61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-112. Express corporation. — The term "express corporation" when used in this act includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in or transacting the business of transporting any freight, merchandise or other property for compensation on the line of any common carrier or stage or auto stage line within this state.

History.

1913, ch. 61, § 2k, p. 247; am. 1915, ch. 62, § 1k, p. 152; am. 1917, ch. 128, subd. k, p.

430; reen. C.L. 106:12; C.S., § 2379; I.C.A., § 59-112.

STATUTORY NOTES

Cross References.

Effect of domestic companies consolidating with foreign companies, Idaho Const., Art. XI, § 14.

Regulation and control, Idaho Const., Art. XI, § 5.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch.

61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-113. Common carrier. — The term "common carrier" when used in this act includes every railroad corporation, street railroad corporation, express corporation, dispatch, sleeping car, dining car, drawing room car, freight line, refrigerator, oil, stock, fruit, car loaning, car renting, car loading and every other car corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, operating for compensation within this state.

History.

1913, ch. 61, § 2 (*l*), p. 247; reen. 1915, ch. 62, § 1 (*l*), p. 152; reen. 1917, ch. 128, subd. *l*, p. 430; am. 1917, ch. 161, § 1 (*l*), p. 488; am.

C.L. 106:13; am. 1919, ch. 172, § 1, p. 546; C.S., § 2380; I.C.A., § 59-113; am. 2010, ch. 167, § 1, p. 343.

STATUTORY NOTES

Cross References.

Air carriers, § 61-1101 et seq.

All railroad, transportation and express companies are common carriers, Idaho Const., Art. XI, § 5.

Railroads, § 62-101 et seq.

Amendments.

The 2010 amendment, by ch. 167, rewrote the section, deleting the public utilities commission's jurisdiction over vessels engaged in the transportation of persons and property in Idaho.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

ANALYSIS

Imposition of tax.
Railroads.

Imposition of Tax.

The legislature may select what business or incidents of value are to be taxed and such selection is not obnoxious to the constitution, if the imposition operates equally on all within the particular class so selected. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

Where a railroad holds out to the public that it will operate as a common carrier, and exercises the right of eminent domain, it cannot contend that it is not a common carrier because it has never operated as such. *Codd v.*

McGoldrick Lumber Co., 46 Idaho 256, 267 P. 439 (1928).

Mere exercise of right of eminent domain by logging railroad did not make it a common carrier. *Codd v. McGoldrick Lumber Co.*, 48 Idaho 1, 279 P. 298 (1929).

Railroads.

Where company is organized as railway corporation, it becomes a common carrier under Idaho Const., Art. XI, § 5, irrespective of any intention of its incorporators to use it for private purposes only, and it can be compelled

to perform its duties as a public service corporation. *Connolly v. Woods*, 13 Idaho 591, 92 P. 573 (1907).

61-114. Pipeline. — (1) The term “pipeline” when used in this act includes all real estate, gathering lines, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the transmission, storage, distribution or delivery of natural gas or manufactured gas, crude oil or other fluid substances except water through pipelines.

(2) “Gathering lines” means fixtures, valves, pipes and other property used to transport, deliver or distribute natural gas, manufactured gas or crude oil from a wellhead to a treatment facility or a point of interconnection with another gathering line, a transmission line or main line.

History.

1913, ch. 61, § 2m, p. 247; reen. 1915, ch. 62, § 1m, p. 152; reen. 1917, ch. 128, subd. m,

p. 430; reen. C.L. 106:14; C.S., § 2381; I.C.A., § 59-114; am. 2012, ch. 72, § 1, p. 207.

STATUTORY NOTES

Cross References.

Damaging or obstructing gas or water pipeline, penalty, § 18-7022.

Eminent domain, § 7-701.

Rights of way for oil and gas pipelines, § 62-1101 et seq.

Safety laws for pipelines, violation, civil penalty and compromise, §§ 61-712A, 61-712B.

Use of street, permission of authorities required, § 62-901.

manufactured gas” therein, and added subsection (2).

Compiler’s Notes.

The term “this act” refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

Effective Dates.

Section 4 of S.L. 2012, ch. 72 declared an emergency. Approved March 20, 2012.

Amendments.

The 2012 amendment, by ch. 72, designated the existing provisions as subsection (1), inserting “gathering lines” and “natural gas or

61-115. Pipeline corporation. — The term “pipeline corporation” when used in this act includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any pipeline for compensation within this state.

History.

1913, ch. 61, § 2n, p. 247; reen. 1915, ch. 62, § 1n, p. 153; reen. 1917, ch. 128, subd. n,

p. 430; reen. C.L. 106:15; C.S., § 2382; I.C.A., § 59-115.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-116. Gas plant. — The term “gas plant” when used in this act includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the production, generation, transmission, delivery or furnishing of gas (natural or manufactured) for light, heat or power.

History.

1913, ch. 61, § 20, p. 247; reen. 1915, ch. 62, § 10, p. 153; reen. 1917, ch. 128, subd. o, p.

430; reen. C.L. 106:16; C.S. § 2383; I.C.A., § 59-116.

STATUTORY NOTES

Compiler's Notes.

The term “this act” refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-

506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

The words enclosed in parentheses so appeared in law as enacted.

JUDICIAL DECISIONS

Jurisdiction.

Public utilities commission had jurisdiction of application of company for a certificate of public convenience and necessity permitting company to transport and distribute natural gas from Canada, even though company might also have to secure a certificate from

federal power commission. Application of Trans-Northwest Gas, Inc., 72 Idaho 215, 238 P.2d 1141 (1951).

Cited in: In re Garrett Transf. & Storage Co., 53 Idaho 200, 23 P.2d 739 (1933).

61-117. Gas corporation. — The term “gas corporation” when used in this act includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any gas plant for compensation, within this state, except where gas is made or produced on and distributed by the maker or producer through private property alone solely for his own use or the use of his tenants and not for sale to others.

History.

1913, ch. 61, § 2p, p. 247; reen. 1915, ch. 62, § 1p, p. 153; reen. 1917, ch. 128, subd. p,

p. 430; reen. C.L. 106:17; C.S., § 2384; I.C.A., § 59-117.

STATUTORY NOTES

Cross References.

Certificates of convenience, §§ 61-526 to 61-529.

Consumer complaints against gas companies, § 61-612.

Duty to furnish gas on application, §§ 62-902, 62-903.

Inspection of meters, § 62-904.

Mutual gas corporation excluded, § 61-104.

61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

Compiler's Notes.

The term “this act” refers to S.L. 1913, ch.

JUDICIAL DECISIONS

Application of Company.

Public utilities commission had jurisdiction of application of company for a certificate of public convenience and necessity permitting company to transport and distribute natural gas from Canada, even though company might also have to secure a certificate from

federal power commission. Application of Trans-Northwest Gas, Inc., 72 Idaho 215, 238 P.2d 1141 (1951).

Cited in: In re Garrett Transf. & Storage Co., 53 Idaho 200, 23 P.2d 739 (1933).

61-118. Electric plant. — The term “electric plant” when used in this act includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the production, generation, transmission, delivery or furnishing of electricity for light, heat or power, and all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

History.

1913, ch. 61, § 2q, p. 247; am. 1915, ch. 62, § 1q, p. 153; am. 1917, ch. 128, subd. 1q, p.

430; reen. C.L. 106:18; C.S., § 2385; I.C.A., § 59-118.

STATUTORY NOTES

Compiler's Notes.

The term “this act” refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

Cited in: In re Garrett Transf. & Storage Co., 53 Idaho 200, 23 P.2d 739 (1933).

61-119. Electrical corporation. — The term “electrical corporation” when used in this act includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any electric plant for compensation within this state, except where electricity is generated on or distributed by the producer through private property alone, solely for his own use or the use of his tenants and not for sale to others, and excepting also, where the electricity is to be used exclusively in operations incident to the working of metalliferous mines and mining claims, mills, or reduction and smelting plants, and the transmission lines and distribution systems are owned by the consumer or where several consumers severally own their individual distribution systems and jointly own, in their own names or through a trustee, the transmission lines used in connection therewith and transmit such electricity, whether generated by themselves or procured from some other source, over such transmission lines and distribution systems without profit, and to be used for their private uses for the purposes aforesaid in places outside the limits of incorporated cities, towns and villages, and not for resale or public use, sale or distribution.

History.

1913, ch. 61, § 2r, p. 247; am. 1915, ch. 62, § 1r, p. 153; am. 1917, ch. 128, subd. r, p. 430;

reen. C.L. 106:19; C.S., § 2386; I.C.A., § 59-119.

STATUTORY NOTES**Cross References.**

Certificate of convenience and necessity, § 61-529.

Electricity generating companies, license tax, §§ 63-2701 to 63-2708.

Electric supplier stabilization act, §§ 61-332 to 61-334C.

Mutual electrical corporation excluded, § 61-104.

Use of highways and streets, § 62-705.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS**Nonprofit Cooperative.**

A nonprofit cooperative corporation organized to serve electric current to its members is not a public service corporation and is not required to serve anyone but its members. *Sutton v. Hunziker*, 75 Idaho 395, 272 P.2d 1012 (1954).

Cited in: *In re Garrett Transf. & Storage Co.*, 53 Idaho 200, 23 P.2d 739 (1933); *Unity Light & Power Co. v. City of Burley*, 83 Idaho 285, 361 P.2d 788 (1961).

61-120. Telephone line. — The term "telephone line" when used in this act includes all conduits, ducts, poles, wires, cables, instruments and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.

History.

1913, ch. 61, § 2s, p. 247; am. 1915, ch. 62, § 1s, p. 154; am. 1917, ch. 128, subd. s, p. 430;

reen. C.L. 106:20; C.S., § 2387; I.C.A., § 59-120.

STATUTORY NOTES**Cross References.**

Right to construct and maintain, Idaho Const., Art. XI, § 13.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121,

61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

Cited in: *In re Garrett Transf. & Storage Co.*, 53 Idaho 200, 23 P.2d 739 (1933); *Filer*

Mut. Tel. Co. v. Idaho State Tax Comm'n, 76 Idaho 256, 281 P.2d 478 (1955).

61-121. Telephone corporation — Telecommunication services. — (1) The term "telephone corporation" when used in title 61, Idaho Code, means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, providing telecommunication

services for compensation within this state. Except as otherwise provided by statute, telephone corporations providing radio paging, mobile radio telecommunication services, answering services (including computerized or otherwise automated answering or voice message services), or one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service or surveying are exempt from any requirement of title 61, or chapter 6, title 62, Idaho Code, in the provision of such services.

(2) "Telecommunication service" means the transmission of two-way interactive switched signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means (which includes message telecommunication service and access service), which originate and terminate in this state, and are offered to or for the public, or some portion thereof, for compensation. Except as otherwise provided by statute, "telecommunication service" does not include the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service, surveying, or the provision of radio paging, mobile radio telecommunication services, answering services (including computerized or otherwise automated answering or voice message services), and such services shall not be subject to the provisions of title 61, Idaho Code, or title 62, Idaho Code.

History.

1913, ch. 61, § 2t, p. 247; am. 1915, ch. 62, § 1t, p. 154; am. 1917, ch. 128, subd. t, p. 430; reen. C.L. 106:21; C.S., § 2388; I.C.A., § 59-

121; am. 1983, ch. 172, § 2, p. 479; am. 1988, ch. 195, § 2, p. 358; am. 1999, ch. 114, § 1, p. 341.

STATUTORY NOTES

Cross References.

Effect of consolidation with foreign company, Idaho Const., Art. XI, § 14.

Mutual telephone corporation excluded, § 61-104.

Telegraph and telephone companies, acceptance and transmission of messages, §§ 62-801 to 62-805.

Legislative Intent.

Section 1 of S.L. 1983, ch. 172 read: "Section 1. The legislature hereby finds that the regulation of the rates, charges and service of mobile telephone service should be removed from the jurisdiction of the Idaho public utilities commission because the forces of the competitive market place can provide better regulation. The legislature declares that the

purpose of this act is to end all regulation of mobile telephone companies as public utilities."

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Section 4 of S.L. 1988, ch. 195 read: "On or before January 1, 1991, the commission shall report to the legislature on the effect of this act on telecommunication services within the state of Idaho, together with the commission's recommendations for changes in the law, if any."

Effective Dates.

Section 7 of S.L. 1999, ch. 114 declared an emergency. Approved March 18, 1999.

JUDICIAL DECISIONS

Cited in: In re Garrett Transf. & Storage Co., 53 Idaho 200, 23 P.2d 739 (1933); In re

Pacific Tel. & Tel. Co., 71 Idaho 476, 233 P.2d 1024 (1951); Filer Mut. Tel. Co. v. Idaho State

Tax Comm'n, 76 Idaho 256, 281 P.2d 478 (1955).

61-122, 61-123. Telegraph line and corporation. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1913, ch. 61, §§ 2u, 2v, p. 247; am. 1915, ch. 62, §§ 1u, 1v, p. 154; am. 1917, ch. 128, subd. u and v, p.

430; reen. C.L. 106:22 and 23; C.S., §§ 2389, 2390; I.C.A., §§ 59-122, 59-123, were repealed by S.L. 1982, ch. 5, § 1.

61-124. Water system. — The term "water system" when used in this act includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and personal property, owned, controlled, operated or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment or measurement of water for power, irrigation, reclamation or manufacturing, or for municipal, domestic or other beneficial use for hire.

A water system which consists of a canal system, or irrigation project constructed pursuant to the act of congress known as the Carey act and the statutes of this state relating thereto, shall not be considered a public utility under the terms of this act, and neither such water system nor the corporation, company or association owning or managing the same shall be under the jurisdiction, control or regulation of the commission.

History.

1913, ch. 61, § 2w, p. 247; reen. 1915, ch. 62, § 1, p. 154; 1915, ch. 105, § 1, p. 246;

reen. 1917, ch. 128, § 1, p. 430; compiled and reen. C.L. 106:24; C.S., § 2391; I.C.A., § 59-124.

STATUTORY NOTES

Cross References.

Irrigation and water rights, §§ 42-101 to 43-2207.

Federal References.

For the "Carey act," referred to in this section, see 43 U.S.C.S. § 641.

Compiler's Notes.

The term "this act" in the first paragraph

refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

Cited in: Public Utils. Comm'n v. Natatorium Co., 36 Idaho 287, 211 P. 533 (1922); In

re Garrett Transf. & Storage Co., 53 Idaho 200, 23 P.2d 739 (1933).

61-125. Water corporation. — The term "water corporation" when used in this act includes every corporation or person, their lessees, trustees, receivers or trustees, appointed by any court whatsoever, owning, controlling, operating or managing any water system for compensation within this state.

History.

1913, ch. 61, § 2x, p. 247; reen. 1915, ch. 62, § 1x, p. 154; reen. 1917, ch. 128, subd. x, p.

430; reen. C.L. 106:25; C.S., § 2392; I.C.A., § 59-125.

STATUTORY NOTES**Cross References.**

Mutual water corporation excluded, § 61-104.

61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121,

JUDICIAL DECISIONS**Limited Number of Users.**

To hold that water corporation is public utility because it receives compensation for water owned by it and furnished to limited number within limited area would be unreasonable interpretation of statute. *Stoehr v. Natatorium Co.*, 34 Idaho 217, 200 P. 132 (1921).

Lumber company furnishing water under contract to another corporation is not "water company" contemplated by this section, par-

ticularly where the primary purpose of the water system is to furnish water for the needs of the lumber company itself. *Humbird Lumber Co. v. Public Utils. Comm'n*, 39 Idaho 505, 228 P. 271 (1924).

Cited in: *Public Utils. Comm'n v. Natatorium Co.*, 36 Idaho 287, 211 P. 533 (1922); *Codd v. McGoldrick Lumber Co.*, 48 Idaho 1, 279 P. 298 (1929); *In re Garrett Transf. & Storage Co.*, 53 Idaho 200, 23 P.2d 739 (1933).

61-126. Vessel. [Repealed.]

Repealed by S.L. 2010, ch. 167, § 2, effective July 1, 2010.

History.

1913, ch. 61, § 2y, p. 247; reen. 1915, ch. 62, § 1y, p. 154; reen. 1917, ch. 128, subd. y, p.

430; reen. C.L. 106:26; C.S., § 2393; I.C.A., § 59-126.

61-127. Wharfinger. [Repealed.]

Repealed by S.L. 2010, ch. 167, § 2, effective July 1, 2010.

History.

1913, ch. 61, § 2z, p. 247; reen. 1915, ch. 62, § 1z, p. 154; reen. 1917, ch. 128, subd. z, p.

430; reen. C.L. 106:27; C.S., § 2394; I.C.A., § 59-127.

61-128. Warehouseman. [Repealed.]

Repealed by S.L. 2010, ch. 167, § 2, effective July 1, 2010.

History.

1913, ch. 61, § 2aa, p. 247; am. 1915, ch. 62, § 1aa, p. 555; am. 1917, ch. 128, subd. aa, p.

430; reen. C.L. 106:28; C.S., § 2395; I.C.A., § 59-128; am. 1933, ch. 62, § 1, p. 99.

61-129. Public utility. — The term "public utility" when used in this act includes every common carrier, pipeline corporation, gas corporation, electrical corporation, telephone corporation and water corporation, as those terms are defined in this chapter and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation

of the commission and to the provisions of this act. The term "public utility" as used in this act shall cover cases:

(1) Where the service is performed and the commodity delivered directly to the public or some portion thereof, and where the service is performed or the commodity delivered to any corporation or corporations, or any person or persons, who in turn, either directly or indirectly or mediately or immediately, performs the services or delivers such commodity to or for the public or some portion thereof; and

(2) Where a pipeline corporation delivers the commodity to any corporation, person, their lessees, receivers or trustees regardless of whether it offers the pipeline service or commodity to the public or some portion thereof. Such pipeline shall be subject to the safety supervision and regulation of the commission.

History.

1913, ch. 61, § 2bb, p. 247; am. 1915, ch. 62, § 1bb, p. 555; am. 1917, ch. 128, subd. bb, p. 430; reen. C.L. 106:29; C.S., § 2396; I.C.A.,

§ 59-129; am. 1967, ch. 6, § 1, p. 9; am. 1982, ch. 5, § 2, p. 8; am. 2010, ch. 167, § 3, p. 343; am. 2012, ch. 72, § 2, p. 207.

STATUTORY NOTES

Cross References.

Annual fees payable to commission by public utilities and motor carriers, § 61-1001.

Right of every public utility to issue securities, §§ 61-901 to 61-908.

Amendments.

The 2010 amendment, by ch. 167, near the beginning, deleted "and wharfinger" following "water corporation."

The 2012 amendment, by ch. 72, divided the existing provisions of the section, designating a portion thereof as subsection (1), added subsection (2), and made stylistic changes.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

Effective Dates.

Section 2 of S.L. 1967, ch. 6 declared an emergency. Approved February 2, 1967.

Section 4 of S.L. 2012, ch. 72 declared an emergency. Approved March 20, 2012.

JUDICIAL DECISIONS

ANALYSIS

Eminent domain.

Extent of control.

Test of public utility.

Eminent Domain.

Where a railroad holds out to the public that it will operate as a common carrier, and exercises the right of eminent domain, it cannot contend that it is not a common carrier because it has never operated as such. *Codd v. McGoldrick Lumber Co.*, 46 Idaho 256, 267 P. 439 (1928).

Mere exercise of right of eminent domain by logging railroad did not make it a common carrier. *Codd v. McGoldrick Lumber Co.*, 48 Idaho 1, 279 P. 298 (1929).

Extent of Control.

Implicit in this section and the rate-making sections is the idea that the operative factor for jurisdictional purposes is the receipt of services and anyone receiving services from a public utility is subject to public utility regulations and control. *United States v. Utah Power & Light Co.*, 98 Idaho 665, 570 P.2d 1353 (1977).

The Idaho public utilities commission (IPUC) has the authority and the jurisdiction to engage in a case-by-case analysis under

applicable statutory law for the standards and requirements pursuant to implementation of the public utility regulatory policies act: thus, all case decisions issued by the IPUC are potentially applicable to, and may have an impact on, a qualifying facility's project. *Rosebud Enters., Inc. v. Idaho Public Utils. Comm'n*, 128 Idaho 609, 917 P.2d 766 (1996).

Test of Public Utility.

To hold that property has been devoted to public use "is not a trivial thing." Such dedication is not presumed without evidence of unequivocal intention. *Stoehr v. Natatorium Co.*, 34 Idaho 217, 200 P. 132 (1921).

Corporation becomes public service corporation, and therefore subject to regulation as public utility, only when and to the extent that business becomes devoted to public use. *Stoehr v. Natatorium Co.*, 34 Idaho 217, 200 P. 132 (1921).

When the appellant sunk its wells and developed and diverted the subterranean water upon its property and began to sell, rent and distribute the same for compensation, it devoted it to a use, which the constitution

declares to be a public use and subject to regulation and control by the state. *Public Utils. Comm'n v. Natatorium Co.*, 36 Idaho 287, 211 P. 533 (1922).

Test for determining whether company is public utility depends upon whether it has held itself out as ready, able and willing to serve public generally or some portion thereof. *Humbird Lumber Co. v. Public Utils. Comm'n*, 39 Idaho 505, 228 P. 271 (1924).

Furnishing water to one person or corporation under contract does not constitute delivery of water to public or some portion thereof. *Humbird Lumber Co. v. Public Utils. Comm'n*, 39 Idaho 505, 228 P. 271 (1924).

Cited in: *William H. Banks Whses., Inc. v. Jean*, 96 F. Supp. 731 (D. Idaho 1951); *In re Pacific Tel. & Tel. Co.*, 71 Idaho 476, 233 P.2d 1024 (1951); *Unity Light & Power Co. v. City of Burley*, 83 Idaho 285, 361 P.2d 788 (1961); *Snake River Homebuilders Ass'n v. City of Caldwell*, 101 Idaho 47, 607 P.2d 1321 (1980); *Afton Energy, Inc. v. Idaho Power Co.*, 107 Idaho 781, 693 P.2d 427 (1984); *Empire Lumber Co. v. Washington Water Power Co.*, 114 Idaho 191, 755 P.2d 1229 (1988).

OPINIONS OF ATTORNEY GENERAL

Cities in Idaho almost certainly have authority under current state law to franchise cable television companies. With general franchising authority under state law, federal law allows cities to regulate the basic cable television service rate and charge a franchise fee, both subject to the conditions of federal law. OAG 94-5. *

Counties in Idaho probably have authority under current state law to franchise cable television companies. With general franchising authority under state law, federal law allows counties to regulate the basic cable television service rate and charge a franchise fee, both subject to the conditions of federal law. OAG 94-5.

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Utilities, § 1 et seq.

C.J.S. — 73B C.J.S., Public Utilities, §§ 1, 2.

74 C.J.S., Railroads, § 3.

A.L.R. — Amount of attorneys' compensation in absence of contract or statute fixing amount. 57 A.L.R.3d 475.

Amount of attorneys' compensation in matters involving guardianship and trusts. 57 A.L.R.3d 550.

Amount of attorneys' fees in tort actions. 57 A.L.R.3d 584.

Amount of attorneys' compensation in proceedings involving wills and administration of decedents' estates. 58 A.L.R.3d 317.

Landlord supplying electricity, gas, water or similar facility to tenant as subject to utility regulation. 75 A.L.R.3d 1204.

Incidental provision of utility services, by party not in that business, as subject to regulation by state regulatory authority. 85 A.L.R.4th 894.

Incidental provision of transportation services, by party not primarily in that business, as common carriage subject to state regulatory control. 87 A.L.R.4th 638.

Excessiveness or adequacy of attorneys' fees in matters involving real estate — modern cases. 10 A.L.R.5th 448.

Excessiveness or adequacy of attorneys' fees in domestic relations cases. 17 A.L.R.5th 366.

Excessiveness or inadequacy of attorneys' fees in matters involving commercial and general business activities. 23 A.L.R.5th 241.

Calculations of attorneys' fees under Federal Tort Claims Act — 28 USCS § 2678. 86 A.L.R. Fed. 866.

words "public utilities commission of the state of Idaho," or the words "public utilities commission" or "commission," are used in the existing laws or statutes of the state of Idaho, or in any laws enacted at the thirty-first session of the legislature of the state of Idaho, with respect to the administration of the public utilities law and refer to and mean the public utilities commission of the state of Idaho, said words shall be read and construed to mean the Idaho public utilities commission created by this act.

History.

1951, ch. 100, § 4, p. 225.

STATUTORY NOTES**Cross References.**

Commission, definition, § 61-102.

Public utilities commission, creation, § 61-201.

100, which is compiled as §§ 61-102, 61-130, 61-201, and 61-209.

Effective Dates.

Section 5 of S.L. 1951, ch. 100 declared an emergency. Approved March 9, 1951.

Compiler's Notes.

The term "this act" refers to S.L. 1951, ch.

CHAPTER 2**PUBLIC UTILITIES COMMISSION****SECTION.**

61-201. Creation — Appointment and term of office of members of the Idaho public utilities commission — Filling of vacancies.

61-202. Removal of commissioners.

61-203. President.

61-204. Attorney general attorney of commission.

61-205. Secretary — Appointment — Duties.

61-206. Employees.

61-207. Commissioners and employees — Oath — Qualifications — Restrictions on political activity.

SECTION.

61-208. Office and meetings.

61-209. Seal.

61-210. Office equipment.

61-211. Quorum — Single commissioner or hearing examiner may hold investigation.

61-212. Compensation of employees.

61-213. Expenses — Audit and payment.

61-214. Annual report of commission.

61-215. Salaries of public utilities commissioners.

61-201. Creation — Appointment and term of office of members of the Idaho public utilities commission — Filling of vacancies. —

There is hereby created a state commission to be known and designated as the Idaho public utilities commission. The commission shall be comprised of three (3) members appointed by the governor, with the approval of the senate. Not more than two (2) members of said commission shall belong to the same political party. The members of the first commission after taking effect of this act shall be appointed for terms beginning with the effective date of this act and expiring as follows: Two (2) commissioners for a term expiring the second Monday in January, 1953, and one (1) commissioner for a term expiring the second Monday in January, 1955. Each of the commissioners shall hold office until his successor is appointed and qualified. On the second Monday in January, 1961, the governor shall appoint one (1) commissioner for a four (4) year term and one (1) commissioner for a six (6) year term, and on the second Monday in January, 1963, the governor shall

appoint one (1) commissioner for a six (6) year term. On the second Monday in January of each second year after the year of 1963, the governor shall appoint one (1) commissioner for a six (6) year term. Whenever a vacancy in the office of commissioner shall occur, the governor shall forthwith appoint a qualified person to fill the same for the unexpired term. If any appointment is made during the recess of the legislature it shall be subject to confirmation by the senate during its next ensuing session.

History.

1913, ch. 61, parts of §§ 3a, 3b, p. 247;
compiled and reen. C.L. 106:30; C.S., § 2397;

I.C.A., § 59-201; am. 1951, ch. 100, § 2, p. 225; am. 1959, ch. 192, § 1, p. 423.

STATUTORY NOTES

Cross References.

Appointment by governor, § 59-904.
Commission, definition, § 61-102.
Compensation of members, § 61-212.
Oath of office, § 61-207.
Qualifications, § 61-207.

Compiler's Notes.

The phrase "the effective date of this act" in the fourth sentence refers to the effective date of S.L. 1951, ch. 100, which was effective March 9, 1951.

The members of the public utilities commission were, by 1913, ch. 57, p. 167, made *ex officio* a state board of tax commissioners. In *Blomquist v. Board of County Comm'rs.*, 25 Idaho 284, 137 P. 174 (1913), it was held that the powers of the tax commission were merely advisory and the law was thereafter repealed by S.L. 1915, ch. 30, § 85. For present law regarding the state tax commission, see § 63-101.

JUDICIAL DECISIONS

ANALYSIS

Authority of commission.
Legislative authority.

Authority of Commission.

The public utilities commission is a creature of statute, with limited authority. *McGuire Estates Water Co. v. Idaho Pub. Utils. Comm'n*, 111 Idaho 341, 723 P.2d 885 (1986).

Although the water company had failed to obtain an operating certificate from the public utilities commission, the commission did not have the authority to prohibit a utility, charging reasonable rates, from collecting on its past due accounts, where the commission's order did not tie the water company's ability to collect to the company's initial efforts toward obtaining certification or to the compa-

ny's actual certification. *McGuire Estates Water Co. v. Idaho Pub. Utils. Comm'n*, 111 Idaho 341, 723 P.2d 885 (1986).

Legislative Authority.

The legislature has the authority to designate those carriers or utilities which must secure from the public utilities commission a certificate of convenience and necessity before beginning operations. In *re Garrett Transf. & Storage Co.*, 53 Idaho 200, 23 P.2d 739 (1933).

Cited in: *McElroy v. Boise Valley Traction Co.*, 40 Idaho 44, 230 P. 1012 (1924); *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 744, 639 P.2d 442 (1981).

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Utilities, § 143 et seq.

C.J.S. — 73B C.J.S., Public Utilities, § 148 et seq.

61-202. Removal of commissioners. — The governor may remove any one or more of said commissioners from office for dereliction of duty or corruption or incompetency upon filing with the secretary of the commission

charges against such commissioner or commissioners, setting forth the grounds of such contemplated removal and giving an opportunity for such commissioner or commissioners to be heard in regard thereto.

History.

1913, ch. 61, § 3b, last part, p. 247; com- piled and reen. C.L. 106:31; C.S., § 2398; I.C.A., § 59-202.

61-203. President. — On the first Monday of April, 1981, and every two (2) years thereafter, the commissioners shall elect one (1) of their members to be president. Should the president be unable to fulfill his term because of death, resignation, absence, disability, removal from office or refusal to act, the commission shall elect one (1) of their members to be president for the remainder of the unexpired term.

History.

1913, ch. 61, § 3a, last part, p. 247; com- piled and reen. C.L. 106:32; C.S., § 2399; I.C.A., § 59-203; am. 1981, ch. 11, § 1, p. 20.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 1981, ch. 11 declared an emergency. Approved March 5, 1981. March 5, 1981.

61-204. Attorney general attorney of commission. — It shall be the right and the duty of the attorney general to represent and appear for the people of the state of Idaho and the commission in all actions and proceedings involving any question under this act or under any order or act of the commission and, if directed to do so by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence, prosecute, and expedite the final determination of all actions and proceedings directed or authorized by the commission; to advise the commission and each commissioner, when so requested, in regard to all matters connected with the powers and duties of the commission and the members thereof; and generally to perform all duties and service as attorney to the commission which the commission may require of him.

History.

1913, ch. 61, § 4, p. 247; reen. C.L. 106:33; C.S., § 2400; I.C.A., § 59-204.

STATUTORY NOTES**Cross References.**

Attorney general, § 67-1401 et seq.

Designation of hearing examiner to represent commission in lieu of an attorney appointed by the attorney general, § 61-211.

Duty of attorney general upon request of the commission to aid in enforcement of public utilities law, § 61-701.

61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch.

JUDICIAL DECISIONS

Assistant Attorney General.

The requirements of this section are fulfilled by the appearance and representation of the people of Idaho before the commission by

an assistant attorney general. Idaho Underground Water Users Ass'n v. Idaho Power Co., 89 Idaho 147, 404 P.2d 859 (1965).

61-205. Secretary — Appointment — Duties. — The commission shall appoint a secretary, who shall hold office during its pleasure. It shall be the duty of the secretary to keep a full and true record of all proceedings of the commission, to issue all necessary process, writs, warrants and notices, and to perform such other duties as the commission may prescribe.

History.

1913, ch. 61, § 5, p. 247; reen. C.L. 106:34; C.S., § 2401; I.C.A., § 59-205.

JUDICIAL DECISIONS

Secretary Not Member.

Secretary is not a member of commission and his act in certifying record is not an act of

commission. McElroy v. Boise Valley Traction Co., 40 Idaho 44, 230 P. 1012 (1924).

61-206. Employees. — (1) The commission shall have power to employ, during its pleasure, such officers, experts, engineers, statisticians, accountants, inspectors, clerks and employees as it may deem necessary to carry out the provisions of this act or to perform the duties and exercise the powers conferred by law upon the commission.

(2) In addition to the number of nonclassified employees provided by other provisions of law, the commission shall have the authority to employ not more than three (3) nonclassified employees as regulatory policy strategists reporting directly to the commission and one (1) nonclassified pipeline safety specialist.

History.

1913, ch. 61, § 6, p. 247; reen. C.L. 106:35; C.S., § 2402; I.C.A., § 59-206; am. 1998, ch.

147, § 1, p. 517; am. 2001, ch. 108, § 1, p. 372.

STATUTORY NOTES

Cross References.

Compensation of employees, § 61-212.

61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to

Effective Dates.

Section 2 of S.L. 1998, ch. 147 declared an emergency. Approved March 20, 1998.

Section 2 of S.L. 2001, ch. 108 declared an emergency. Approved March 22, 2001.

61-207. Commissioners and employees — Oath — Qualifications — Restrictions on political activity. — Each commissioner shall devote his entire time to the duties of his office and shall, together with each person appointed to a civil executive office by the commission, before entering upon

the duties of his office, take and subscribe to an oath to the effect that he will support the Constitution of the United States and the state of Idaho, and faithfully and impartially discharge the duties of his office as required by law and that he is not interested directly or indirectly in any public utility embraced within the provisions of this act; or any of its stocks, bonds, mortgages, securities or earnings.

Each commissioner shall be a qualified elector of this state, and no person while in the employ of or holding any official relation to any corporation or person, which said corporation or person is subject in whole or in part to regulation by the commission, and no person owning stocks or bonds of any such corporation or who is in any manner pecuniarily interested therein shall be appointed to or hold the office of commissioner or be appointed or employed by the commission: provided, that if such person shall become the owner of such stocks or bonds or become pecuniarily interested in such corporation otherwise than voluntarily, he shall within a reasonable time divest himself of such ownership or interest; failing to do so, his office or employment shall become vacant.

No commissioner shall, directly or indirectly, while he is a member of said commission, take any part in politics by advocating or opposing the election, appointment or nomination of any person or persons to any office in the state of Idaho, excepting under officers in the commission, nor shall any commissioner seek appointment or election or nomination for any civil office in the state of Idaho, other than commissioner, while he is a member of said commission, nor shall any commissioner seek appointment, nomination or election to any civil office in the state of Idaho, other than that of commissioner, for a period of two (2) years from the date of the expiration of his term or after his resignation or removal from said office.

History.

1913, ch. 61, § 7, p. 247; reen. C.L. 106:36;
C.S., § 2403; I.C.A., § 59-207.

STATUTORY NOTES

Cross References.

Electors, §§ 34-401 to 34-405.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to

61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-208. Office and meetings. — The office of the commission shall be in Ada county. The office shall always be open, legal holidays and nonjudicial days excepted. The commission shall hold its session at least once in each calendar month, and may also meet at such other times and in such other places as may be expedient and necessary for the proper performance of its duties. For the purpose of holding sessions in places other than the office of the commission, the commission shall have the power to rent quarters or offices, and the expense thereof and in connection therewith, shall be paid in

the same manner as the other expenses authorized by this act. The sessions of the commission shall be public.

History.

1913, ch. 61, § 8a, p. 247; reen. C.L. 106:37; C.S., § 2404; I.C.A., § 59-208; am. 2001, ch. 183, § 26, p. 613.

STATUTORY NOTES

Cross References.

Majority action governs, § 61-211.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to

61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-209. Seal. — The commission shall have a seal bearing the following inscription: "Idaho public utilities commission." The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the commission shall direct. All courts shall take judicial notice of said seal.

History.

1913, ch. 61, § 8b, p. 247; reen. C.L. 106:38; C.S., § 2405; I.C.A., § 59-209; am. 1951, ch. 100, § 3, p. 225.

STATUTORY NOTES

Effective Dates.

Section 5 of S.L. 1951, ch. 100 declared an emergency. Approved March 9, 1951.

61-210. Office equipment. — The commission is authorized to procure all necessary books, maps, charts, stationery, instruments, office furniture, apparatus and appliances, and the same shall be paid for in the same manner as other expenses authorized by this act.

History.

1913, ch. 61, § 8c, p. 247; reen. C.L. 106:39; C.S., § 2406; I.C.A., § 59-210.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-211. Quorum — Single commissioner or hearing examiner may hold investigation. — A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. No single vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. The act of the majority of the commissioners when in session as a board shall be deemed to be the

act of the commission; but any investigation, inquiry or hearing which the commission has power to undertake or hold may be undertaken or held by or before any commissioner or hearing examiner designated for that purpose by the commission, and every finding, order or decision made by a commissioner or hearing examiner so designated, pursuant to such investigation, inquiry or hearing, when approved and confirmed by the commission and ordered filed in its office, shall be and be deemed to be the finding, order or decision of the commission. The commission may designate the hearing examiner to represent the commission in actions and proceedings in lieu of an attorney appointed by the attorney general under section 61-204, Idaho Code, as amended, in which event the attorney general will appoint only an attorney to represent the people of the state of Idaho.

History.

1913, ch. 61, § 9, p. 247; reen. C.L. 106:40;

C.S., § 2407; I.C.A., § 59-211; am. 1965, ch. 125, § 1, p. 252.

STATUTORY NOTES**Cross References.**

Attorney general, attorney of commission, § 61-204.

Duty of attorney general upon request of the commission to aid in enforcement of public utilities law, § 61-701.

61-212. Compensation of employees. — All officers, experts, engineers, statisticians, accountants, inspectors, clerks and employees of the commission shall receive such compensation as may be fixed by the commission. The salary or compensation of every person holding office or employment under this act shall be paid on regular pay periods from the funds appropriated for the use of the commission after being approved by the commission, upon claims therefor to be duly audited by the proper authority.

History.

1913, ch. 61, § 10a, p. 247; am. 1915, ch. 115, § 1, subd. a, p. 261; reen. C.L. 106:41; C.S., § 2408; am. 1923, ch. 99, § 1, p. 123; I.C.A., § 59-212; am. 1945, ch. 192, § 1, p.

300; am. 1967, ch. 400, § 1, p. 1206; am. 1969, ch. 409, § 1, p. 1134; am. 1973, ch. 277, § 1, p. 589; am. 1976, ch. 350, § 1, p. 1159; am. 1977, ch. 178, § 9, p. 459; am. 1978, ch. 305, § 1, p. 766.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

Effective Dates.

Section 2 of S.L. 1923, ch. 99 declared an emergency.

Section 2 of S.L. 1945, ch. 192 provided that the act should take effect July 1, 1945.

Section 2 of S.L. 1969, ch. 409 provided that the act should take effect on and after July 1, 1969.

61-213. Expenses — Audit and payment. — All expense incurred by the commission pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the commissioners, their officers and employees, incurred while on business of

the commission, shall be paid from the funds appropriated for the use of the commission, after being approved by the commission upon claims therefor to be audited as provided by law.

History.

115, § 1, subd. b, p. 261; reen. C.L. 106:42; 1913, ch. 61, § 10b, p. 247; reen. 1915, ch. C.S., § 2409; I.C.A., § 59-213.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Utilities, § 156.

61-214. Annual report of commission. — The commission shall make and submit to the governor on or before the first day of December of each year, a report containing a full and complete account of its transactions, and proceedings for the preceding fiscal year, ending June thirtieth, together with such other facts, suggestions, and recommendations as it may deem of value to the people of the state.

History.

1913, ch. 61, § 11, p. 247; reen. C.L. 106:43; C.S., § 2410; I.C.A., § 59-214.

STATUTORY NOTES

Cross References.

Reports by public utilities to commission, § 61-401 et seq.

61-215. Salaries of public utilities commissioners. — Each member of the public utilities commission shall devote full time to the performance of his/her duties. Commencing on July 1, 2012, the annual salary of members of the public utilities commission shall be ninety-four thousand ten dollars (\$94,010) and shall be paid from sources set by the legislature.

History.

I.C., § 61-215, as added by 1987, ch. 60, § 1, p. 108; am. 1990, ch. 115, § 1, p. 239; am. 1993, ch. 45, § 1, p. 117; am. 1998, ch. 358, § 2, p. 1121; am. 1999, ch. 18, § 1, p. 26; am. 2000, ch. 359, § 1, p. 1195; am. 2001, ch. 253, § 1, p. 918; am. 2004, ch. 281, § 1, p. 774; am. 2006, ch. 368, § 1, p. 1106; am. 2007, ch. 121, § 1, p. 370; am. 2008, ch. 285, § 1, p. 807; am. 2012, ch. 224, § 1, p. 610.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 368, substituted the current second sentence for "Commencing on July 1, 2004, the annual salary of

members of the public utilities commission shall be eighty-two thousand seven hundred forty dollars (\$82,740) and shall be paid from sources set by the legislature."

The 2007 amendment, by ch. 121, substituted "July 1, 2007" for "July 1, 2006" and "eighty-nine thousand four hundred eighty-three dollars (\$89,483)" for "eighty-five thousand two hundred twenty-two (\$85,222)."

The 2008 amendment, by ch. 285, in the last sentence, substituted "July 1, 2008" for "July 1, 2007" and "ninety-two thousand one hundred sixty-seven dollars (\$92,167)" for "eighty-nine thousand four hundred eighty-three dollars (\$89,483)."

The 2012 amendment by ch. 224, substituted "Commencing on July 1, 2012, the annual salary of members of the public utilities commission shall be ninety-four thousand ten dollars (\$94,010)" for "Commencing on July 1, 2008, the annual salary of members of the public utilities commission shall be ninety-two thousand one hundred sixty-seven dollars (\$92,167)" in the second sentence.

CHAPTER 3

DUTIES OF PUBLIC UTILITIES

SECTION.

- 61-301. Charges just and reasonable.
- 61-302. Maintenance of adequate service.
- 61-303. Rules and regulations just and reasonable.
- 61-304. Schedules of common carriers to contents — Posting — Form.
- 61-305. Schedules of others than common carriers.
- 61-306. Schedules — Change in form.
- 61-307. Schedules — Change in rate and service.
- 61-308. Schedules — Joint rates.
- 61-309. Schedules — Filing by common carriers a precedent to do business.
- 61-310. Only schedule rates to be charged.
- 61-311. Passes — Restricted to certain persons.
- 61-312. Property handled free — Reduced rates for dependents.
- 61-313. Schedule charges only permitted.
- 61-314. Schedule of rates within and without state.
- 61-315. Discrimination and preference prohibited.
- 61-315A. Certain inverted residential electrical rate structures prohibited — Expiration.
- 61-316. Profits.
- 61-317. Sliding scale of charges — Automatic adjustment.
- 61-318. Interchange of traffic — Duty of establishing joint rates.
- 61-319. Interchange of telephone messages.
- 61-320. False billing — Transportation at less than scheduled rates prohibited.
- 61-321. False claim for damages.
- 61-322. Long and short haul.
- 61-323. Telephone companies — Long and short distance service.
- 61-324. Railroads — Switch connection.
- 61-325. Railroads — Spurs.
- 61-326. Street and interurban railroads — Fares — Transfers.

SECTION.

- 61-327. Electric utility property — Acquisition by certain public agencies prohibited.
- 61-328. Electric utilities — Sale of property to be approved by commission.
- 61-329. Unlawful transfer or acquisition — Escheat.
- 61-330. Evasions of act — Conclusive presumptions.
- 61-331. Violation of act — Criminal penalty.
- 61-332. Purpose of electric supplier stabilization act.
- 61-332A. Definitions for electric supplier stabilization act.
- 61-332B. Electric supplier prohibited from serving consumers or former consumers of another electric supplier.
- 61-332C. Provisions for selecting electric supplier for new electric service entrances.
- 61-332D. Wheeling services.
- 61-333. Authorizing contracts among electric suppliers to resolve territories, consumers and to transfer facilities.
- 61-333A. Increased area — Extension of service permitted.
- 61-333B. Municipal corporation restricted in serving new area previously served by utility or cooperative association — Voluntary agreements — Election — Appeals.
- 61-333C. Nonmunicipal service organizations prohibited from extending service.
- 61-334. Special rules of interpretation.
- 61-334A. Remedies for violation of this act.
- 61-334B. Commission supervision and authority.
- 61-334C. Electric supplier immunity.
- 61-335. Approval of carrier agreements. [Repealed.]
- 61-336. Additional authorities of electrical or natural gas corporations.

SECTION.

61-337. Fish and wildlife mitigation information.

SECTION.

61-338, 61-339. [Null and Void.]

61-301. Charges just and reasonable. — All charges made, demanded or received by any public utility, or by any two (2) or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful.

History.

1913, ch. 61, § 12a, p. 247; reen. C.L. 106:44; C.S., § 2411; I.C.A., § 59-301.

STATUTORY NOTES

Cross References.

Equal transportation rights guaranteed, Idaho Const., Art. XI, § 6.

Right of legislature to control transportation rates, Idaho Const., Art. XI, § 5.

JUDICIAL DECISIONS

ANALYSIS

Appellate review.
Commission's authority.
Criteria for rate differentiation.
Legislative authority.
Rate making generally.
Reasonable classifications.
Reasonableness of rates.

Appellate Review.

The supreme court's review of whether the evidence presented to the public utilities commission is competent and substantial must be tempered by a consideration of whether a proposed new rate structure is also just and reasonable as required by §§ 61-315 and 61-502 and this section. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981).

Commission's Authority.

The public utilities commission has authority to fix rates which are just and equitable, both to the people and to the corporation. *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083 (1914).

A company is required by law to file with the public utilities commission its rates and charges, and to charge without change, modification, variance or rebate the rates set forth in its approved schedule. *Boise Valley Traction Co. v. Ada County*, 38 Idaho 350, 222 P. 1035 (1923).

Since the commission has power to regulate and fix charges and rates, but a utility is enjoined from establishing rates or charges which are preferential or discriminatory, it

follows by implication that the commission's authority may only be exercised in such a way as to fix nondiscriminatory, and nonpreferential rates and charges. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984).

Criteria for Rate Differentiation.

Absent a legislative pronouncement to the contrary, it is within the public utilities commission's jurisdictional province to consider in its rate making capacity all relevant criteria, including energy conservation and concomitant concepts of optimum use and resource allocation. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981).

As between classes of service, whether those classes be as between schedules or as between customers within a schedule, valid considerations for rate differentiation are the quantity of the utility used, the nature of the use, the time of use, the pattern of use, the differences in the conditions of service, the costs of service, the reasonable efficiency and economy of operation, the actual differences in the situation of the consumers for the furnishing of the service, contribution to peak

load, costs of service on peak demand days, costs of storage and economic incentives; one criterion is not necessarily more essential than another nor is the list of criteria exclusive. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981).

Legislative Authority.

The legislature has authority to designate those carriers or utilities which must secure from the public utilities commission a certificate of convenience and necessity before beginning operations. *In re Garrett Transf. & Storage Co.*, 53 Idaho 200, 23 P.2d 739 (1933).

Rate Making Generally.

Rate making principles applied to electric rates. *Idaho Power Co. v. Thompson*, 19 F.2d 547 (D. Idaho 1927).

State has the right to regulate rates charged by public service corporations. *Hatch v. Consumers' Co.*, 17 Idaho 204, 104 P. 670 (1909), *aff'd*, 224 U.S. 148, 32 S. Ct. 465, 56 L. Ed. 703 (1912).

Valuation for rate making purposes. *Boise Artesian Water Co. v. Public Utils. Comm'n*, 40 Idaho 690, 236 P. 525 (1925).

Rate making for municipally-owned public utility. *Kiefer v. City of Idaho Falls*, 49 Idaho 458, 289 P. 81 (1930).

Reasonable Classifications.

A reasonable classification of utility customers may justify the setting of different rates and charges for the different classes of customers; any such difference in a utility's rates and charges must be justified by a corresponding classification of customers that is based upon factors such as cost of service, quantity of electricity used, differences in conditions of service, or the time, nature and pattern of the use. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984).

An order of the public utility commission imposing a nonrecurring charge of \$50.00 per kilowatt on the installation of or conversion to electric space heating after a fixed date exceeded the commission's authority to fix and

regulate rates, since it discriminatorily differentiated between classes of new and old customers without reference to the pattern, nature, and time of usage, quantity, cost of service, or difference in condition of service as between the two classes. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984).

Where cost of servicing all water customers increased due to several factors including passage of a federal act, court held no particular group of customers should bear the burden of additional expense occasioned by changes in federal law that imposed new water quality standards; as such, it was unlawfully discriminatory to charge new customers hook-up fees based on an allocation of the incremental cost of new plant construction required by growth and passage of the federal act, while not assessing any charges to existing customers. *Building Contractors Ass'n v. Idaho Public Utils. Comm'n*, 128 Idaho 534, 916 P.2d 1259 (1996).

Reasonableness of Rates.

Where the public utilities commission revised rates without hearing evidence on the cost of service analysis, the rates were not unjust and unreasonable under this section and §§ 61-315 and 61-502, since, although cost of service is an important criterion which in certain cases may be largely dispositive, it is not a per se essential element without which rate making is invalid. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981).

Cited in: *Coeur d'Alene & St. Joe Transp. Co. v. Ferrell*, 22 Idaho 752, 128 P. 565 (1912); *In re Pacific Tel. & Tel. Co.*, 71 Idaho 476, 233 P.2d 1024 (1951); *In re Union Pac. R.R.*, 81 Idaho 300, 340 P.2d 1103 (1959); *Agricultural Prods. Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 557 P.2d 617 (1976); *Afton Energy, Inc. v. Idaho Power Co.*, 107 Idaho 781, 693 P.2d 427 (1984); *General Tel. Co. v. Idaho Pub. Utils. Comm'n*, 109 Idaho 942, 712 P.2d 643 (1986); *Stevenson v. Prairie Power Coop.*, 118 Idaho 52, 794 P.2d 641 (Ct. App. 1989).

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Utilities, § 94 et seq.

C.J.S. — 29 C.J.S., Electricity, §§ 64 to 66; 73B C.J.S., Public Utilities, § 14 et seq.; 86 C.J.S., Telecommunications, §§ 62 to 80, 109; 94 C.J.S., Waters, §§ 687 to 690.

A.L.R. — Payment of charge as condition of further service. 19 A.L.R.3d 1227.

Water, regulation making payment a charge upon property irrespective of person who enjoyed service. 19 A.L.R.3d 1227.

Electricity, gas or water furnished by public utility as "goods" within provisions of Uniform Commercial Code Article 2 on Sales. 48 A.L.R.3d 1060.

61-302. Maintenance of adequate service. — Every public utility

shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable.

History.

1913, ch. 61, § 12b, p. 247; reen. C.L. 106:45; C.S., § 2412; I.C.A., § 59-302.

JUDICIAL DECISIONS**ANALYSIS**

Discrimination.
Equal facilities.
Evidence.
Hearing requirement.
Negligence.
Railroad marshaling yards.
Rate making.
Service.
—Abandonment.
—Cost.
—Right to require.
—Sufficiency.
Warning of danger.

Discrimination.

Railroad company, engaged in the business of common carrier, is bound under the common law to receive and carry, within the class of goods it is engaged in carrying, such goods as are tendered for that purpose; and, in absence of a special contract, to carry them with the full common-law liability of a common carrier. *McIntosh v. Oregon R.R. & Nav. Co.*, 17 Idaho 100, 105 P. 66 (1909).

Equal Facilities.

Contract entered into by railroad company granting to steamboat company the exclusive right to receive and discharge freight and passengers at dock or wharf which was a part of and connected with its depot and station grounds, and which afforded the only means and facility for approaching the station grounds by means of the water highway, and excluding all competitors of such steamboat company from like or similar privileges at any time or at all, was undue and unreasonable discrimination in favor of one company and against its competitors, which was in violation of Idaho Const., Art. XI, § 6. *Coeur d'Alene & St. Joe Transp. Co. v. Ferrell*, 22 Idaho 752, 128 P. 565 (1912).

Evidence.

There was not substantial and competent evidence to support a finding that power company acted with gross negligence, deviating from the reasonable standards of conduct of the industry and expected by their customers, to support an award of punitive damages

when it relocated condominiums' transformers from underground vaults to above ground locations, thus punitive damages award was reversed and award of attorney fees was vacated and remanded to redetermine if condominiums continued to be prevailing party. *New Villager Condominium Ass'n v. Idaho Power Co.*, 129 Idaho 551, 928 P.2d 901 (1996).

Hearing Requirement.

Where the record disclosed that zoning requirements and pollution and health regulations would be met by proposed railroad classification yard and where a plan had been agreed upon for road rearrangement, safer highway-railway crossings and grade separations, the utilities commission did not abuse its discretionary power in finding that a full scale hearing and investigation into the proposed construction of the classification yard was not justified. *Burlington Out Now v. Burlington N., Inc.*, 96 Idaho 594, 532 P.2d 936 (1975).

Negligence.

Where the conclusion to be drawn from defendant water company's evidence was that the cause of rupture in its water mains could have been a defect in manufacture of the main or damage to the main in installation which reasonable inspection at that time would have revealed and that such condition permitted corrosion to weaken the main permitting the rupture to give rise to a reasonable inference of negligence under the doctrine of *res ipsa*

loquitur, the conclusion was in harmony with the duty imposed by statute upon a public utility. *C.C. Anderson Stores Co. v. Boise Water Corp.*, 84 Idaho 355, 372 P.2d 752 (1962).

Railroad Marshaling Yards.

This section gives the public utilities commission authority to assume jurisdiction over a proposed classification and marshaling yard of a railroad corporation, if it has reason to believe there is a real or genuine threat specifically to the health or safety of the public. *Burlington Out Now v. Burlington N., Inc.*, 96 Idaho 594, 532 P.2d 936 (1975).

Rate Making.

The public utilities commission has authority to fix rates which are just and equitable, both to the people and to the corporation. *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083 (1914).

Absent a legislative pronouncement to the contrary, it is within the public utilities commission's jurisdictional province to consider in its rate making capacity all relevant criteria, including energy conservation and concomitant concepts of optimum use and resource allocation. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981).

Service.

—Abandonment.

On an application by a railroad to abandon a portion of its service and substitute service of another sort in lieu thereof, the burden of proof rests on the railroad to show that the proposed substitute service would be adequate, efficient, just and reasonable. *In re Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

Where the total revenue from passenger trains over a certain branch line for eighteen months was \$11,473.80 as against an expense of \$23,063.46, the use of the passenger train service by the public being negligible, and there were adequate and efficient means of transportation over another railroad and by bus service, the public utilities commission erred in denying the railroad's application to discontinue passenger train service and to substitute, in lieu thereof, mixed trains consisting of a passenger car and a baggage car on existing freight trains. *In re Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

No fixed rule can be applied in determining whether or not a railroad is entitled to discon-

tinue a portion of its service and substitute in lieu thereof a different class of service, and each case must be considered in the light of all of its facts. *In re Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

—Cost.

In determining whether patronage justifies expense of operation of passenger trains on a railroad's branch line, it is proper to take into consideration the expense of furnishing passenger service, but that is not the most important question, the controlling question being the necessity and reasonableness of the service to the public. *In re Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

—Right to Require.

A railroad was entitled to permission to substitute a caretaker for agency service for community on a branch line having 800 voters, where such substitution would not be a material detriment to the community and would lessen the expense and release a telegraph operator for more necessary service. *In re Union Pac. R.R.*, 64 Idaho 529, 134 P.2d 599 (1943).

If the service rendered by a railroad is adequate, efficient, just and reasonable as required by statute, it is neither just nor reasonable to impose an unreasonable and unjust economic loss on the railroad, and indirectly, on the public by requiring unnecessary and useless expenditures. *In re Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

—Sufficiency.

It is the duty of the public utilities commission, when an application to discontinue an agency and substitute a caretaker to furnish all substantial service previously furnished, to consider whether the substituted service would be "adequate, efficient, just and reasonable service," in the light of the facts. *In re Union Pac. R.R.*, 64 Idaho 529, 134 P.2d 599 (1943).

Warning of Danger.

Company had duty to add odorant to odorless butane gas which it was furnishing as a warning of a dangerous condition. *Doxstater v. Northwest Cities Gas Co.*, 65 Idaho 814, 154 P.2d 498 (1944).

Cited in: *In re Pacific Tel. & Tel. Co.*, 71 Idaho 476, 233 P.2d 1024 (1951); *Agricultural Prods. Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 557 P.2d 617 (1976).

61-303. Rules and regulations just and reasonable. — All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

History.

1913, ch. 61, § 12c, p. 247; reen. C.L. 106:46; C.S., § 2413; I.C.A., § 59-303.

JUDICIAL DECISIONS**ANALYSIS**

Commission's authority to fix rates.
Rules valid if reasonable.

Commission's Authority to Fix Rates.

The public utilities commission has not only the authority but the duty to fix just and reasonable rates, both to the people and to the corporation. *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083 (1914).

Rules Valid if Reasonable.

Railroad company owning and maintaining a dock or wharf on its station grounds may adopt and enforce such reasonable rules and regulations as will prevent blocking and in-

terfering with its business or with public traffic, and, so long as such rules and regulations are reasonable and do not amount to an undue or unreasonable discrimination between competitors, the same may be enforced and observance thereof required. *Coeur d'Alene & St. Joe Transp. Co. v. Ferrell*, 22 Idaho 752, 128 P. 565 (1912).

Cited in: *In re Pacific Tel. & Tel. Co.*, 71 Idaho 476, 233 P.2d 1024 (1951).

61-304. Schedules of common carriers to contents — Posting — Form. — Every common carrier shall file with the commission and shall print and keep open to the public inspection schedules showing the rates, fares, charge and classification for the transportation between termini within this state of persons and property from each point upon its route to all other points thereon and from all points upon its route to all points upon every other route leased, operated or controlled by it; and from each point on its route or upon any route leased, operated or controlled by it to all points upon the route of any other common carrier, whenever a through route and a joint rate shall have been established or ordered between any two (2) such points. If no joint rate over a through route has been established, the schedules of the several carriers in such through route shall show the separately established rates, fares, charges and classifications applicable to the through transportation.

The schedule printed as aforesaid shall plainly state the places between which such property and persons will be carried, and shall also contain the classification of passengers or property in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require to be stated, all privileges or facilities granted or allowed, and all rules or regulations which may in any wise change, affect or determine any part, or the aggregate of, such rates, fares, charges and classifications, or the value of the various services rendered to the passenger, shipper or consignee. Subject to such rules and regulations as the commission may prescribe, such schedules shall be plainly printed in large type and a copy thereof shall be kept by every such carrier readily accessible to and for inspection by the public in every station or office of such carrier where passengers or property are respectively received for transportation when such station or office is in charge of an agent, and in every station or office of such carrier where passenger tickets or tickets for sleeping, parlor car or other train accommodations are sold or

bills of lading or waybills or receipts for property issued. Any or all of such schedules kept as aforesaid shall be immediately produced by such carrier for inspection upon the demand of any person.

A notice printed in bold type and stating that such schedules are on file with the agent and open to inspection by any person, and that the agent will assist any person to determine from such schedules any rates, fares, rules, or regulations in force, shall be kept posted by the carrier in two (2) public and conspicuous places in every such station or office.

The form of every such schedule shall be prescribed by the commission and shall conform in the case of common carriers subject to the act of congress entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, as nearly as may be to the form of schedule prescribed by the interstate commerce commission under this act. When the schedules and classifications required by the said interstate commerce commission contain in whole or in part the information required by the provisions of this section, the posting, publishing and filing of a copy or copies of such schedules and classifications required by the interstate commerce commission shall be deemed a compliance with the requirements of this section in so far as such schedules and classifications contain the information required by this section, and any additional or different information may be posted, published and filed in a supplementary schedule.

History.

1913, ch. 61, § 13a, p. 247; compiled and

reen. C.L. 106:47; C.S., § 2414; I.C.A., § 59-304.

STATUTORY NOTES

Federal References.

Act of February 4, 1887, referred to in the last paragraph, was repealed by Act Oct. 17, 1978, P.L. 95-473.

Compiler's Notes.

The term "this act" in the last paragraph refers to S.L. 1913, ch. 61, which is compiled

as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Utilities, § 169.

C.J.S. — 73B C.J.S., Public Utilities, §§ 26 to 32, 136 to 138.

A.L.R. — Discontinuing service, common

service pipe, right to shut off one served by, for nonpayment by another. 19 A.L.R.3d 1227.

Discontinuing service, refusal to pay for past service rendered at another address. 73 A.L.R.3d 1292.

61-305. Schedules of others than common carriers. — Under such rules and regulations as the commission may prescribe, every public utility other than a common carrier shall file with the commission within such time and in such form as the commission may designate, and shall print and keep open to public inspection schedules showing all rates, tolls, rentals, charges and classifications collected or enforced, or to be collected or enforced, together with all rules, regulations, contracts, privileges and facilities which

in any manner affect or relate to rates, tolls, rentals, classifications or service. The rates, tolls, rentals and charges shown on such schedules when filed by a public utility as to which the commission by this act acquires the power to fix any rates, tolls, rentals or charges, shall not within any portion of the territory as to which the commission acquires as to such public utility such power, exceed the rates, tolls, rentals or charges in effect on the second day of January, 1913, the rates, tolls, rentals and charges shown on such schedules when filed by any public utility as to any territory as to which the commission does not by this act acquire as to such public utility such power, shall not exceed the rates, tolls, rentals and charges in effect at the time the commission acquires as to such territory and as to such public utility, the power to fix rates, tolls, rentals or charges. Nothing in this section contained shall prevent the commission from approving or fixing the rates, tolls, rentals or charges, from time to time, in excess or less than those shown by said schedules.

History.

1913, ch. 61, § 13b, p. 247; compiled and

reen. C.L. 106:48; C.S., § 2415; I.C.A., § 59-305.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

ANALYSIS

Classification by commission.
Constitutionality of regulation.

Classification by Commission.

Public utilities commission, in the exercise of its authority to see that rates, both as a whole and for each particular service, are just to the utility and reasonable to the consumer, and nondiscriminatory as between consumers, may not only fix rates for each class, but may classify. *Idaho Power Co. v. Thompson*, 19 F.2d 547 (D. Idaho 1927) (various rate-making principles discussed and applied).

Constitutionality of Regulation.

Any regulation which operates as a confiscation of private property or constitutes an arbitrary or unreasonable infringement of personal or property rights is void as repugnant to the constitutional guaranties of due process and equal protection of the laws. *Osborn Utils. Corp. v. Public Utils. Comm'n*, 52 Idaho 571, 17 P.2d 333 (1932).

61-306. Schedules — Change in form. — The commission shall have the power, from time to time, in its discretion, to determine and prescribe by order such changes in the form of the schedules referred to in the two (2) preceding sections as it may find expedient, and to modify the requirements of any of its orders, rules or regulations in respect to any matter in this section referred to.

History.

1913, ch. 61, § 13c, p. 247; reen. C.L. 106:49; C.S., § 2416; I.C.A., § 59-306.

61-307. Schedules — Change in rate and service. — Unless the commission otherwise orders, no change shall be made by any public utility in any rate, fare, toll, rental, charge or classification, or in any rule, regulation or contract relating to or affecting any rate, fare, toll, rental, charge, classification or service, or in any privilege or facility except after thirty (30) days' notice to the commission and to the public as herein provided. Such notice shall be given by filing with the commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect. The commission, for good cause shown, may allow changes without requiring the thirty (30) days' notice herein provided for, by an order specifying the changes so to be made and the time when they shall take effect, and the manner in which they shall be filed and published. When any change is proposed in any rate, fare, toll, rental, charge or classification, or in any form of contract or agreement or in any rule, regulation or contract relating to or affecting any rate, fare, toll, rental, charge, classification or service, or in any privilege or facility, attention shall be directed to such change on the schedule filed with the commission by some character to be designated by the commission, immediately preceding or following the item.

History.

1913, ch. 61, § 14, p. 247; reen. C.L. 106:50;
C.S., § 2417; I.C.A., § 59-307.

STATUTORY NOTES

Cross References.

Finding of commission necessary for increase in rate, § 61-622.

JUDICIAL DECISIONS

ANALYSIS

Applicability of Administrative Procedures Act.

Change in rates.

Jurisdiction.

Municipal utilities.

Not applicable to counties.

Notice.

Service.

—Expense.

—Maintenance.

—Negligible use by passengers.

—Right to.

—Suspension or abandonment.

—Unreasonable and unjust economic loss.

Applicability of Administrative Procedures Act.

When the public utilities commission is engaged in a legislative function, such as rate-setting for a cogenerator or small power producer, it need not act pursuant to the administrative procedures act, but need only

fulfill the notice requirements imposed on it by the public utility regulation statutes. *A.W. Brown Co. v. Idaho Power Co.*, 121 Idaho 812, 828 P.2d 841 (1992).

Change in Rates.

The commission had authority to fix utility

rates which would supersede rates previously fixed by private contract, but, before the commission could increase electric service rates charged to an industrial customer under a special service contract, it was required to find specifically that the different rate was unreasonable and adverse to the public interest. *Agricultural Prods. Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 557 P.2d 617 (1976).

Jurisdiction.

This section is not the section which grants jurisdiction or powers to the Idaho public utilities commission. *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 597 P.2d 1058 (1979).

Municipal Utilities.

The rate-fixing statutes applicable to individuals and private corporations exclude municipally owned utilities from their operation. *Snake River Homebuilders Ass'n v. City of Caldwell*, 101 Idaho 47, 607 P.2d 1321 (1980).

Not Applicable to Counties.

This provision is not binding on counties, in view of § 61-312. *Boise Valley Traction Co. v. Ada County*, 38 Idaho 350, 222 P. 1035 (1923).

Notice.

If the commission returns an application for correction or dismisses it without prejudice prior to the issuance of a suspension order, the 30 days' notice provision does not begin to run until the application is returned to the commission in correct form, but the effect of a "return," after issuance of a suspension order, is to toll the running of the time period which begins to run from the point at which it was interrupted once the application is corrected and refiled. *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 98 Idaho 718, 571 P.2d 1119 (1977).

Service.

—Expense.

In determining whether patronage justified the expense of operating passenger trains on a railroad's branch line, it was proper to consider the expense of furnishing passenger service, but that was not the most important question; the controlling question being the necessity and reasonableness of the service to the public. In re *Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

In considering the question of whether or not a railroad should be compelled to continue the operation of a branch line passenger service, the entire revenues of the whole system are to be taken into account, and not merely the direct return of the branch line itself, which is sought to be abandoned. In re *Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

—Maintenance.

Where the public utilities commission issued an order to show cause, pursuant to which the railroad served therewith appeared, and testimony was offered as to why a certain class of service should be continued which the railroad proposed to abandon, and a full hearing was had and without objections on the part of the state or protestants the controversy was decided by the commission as effectively as if the railroad itself had instituted proceedings under this section, and the commission had jurisdiction to grant the railroad relief, notwithstanding the railroad's failure to comply with this section. In re *Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

—Negligible Use by Passengers.

Where the total revenue from passenger trains over railroad's branch line for eighteen months was \$11,473.80 as against an expense of \$23,063.46, the use of the passenger train service by the public being negligible, and there were adequate and efficient means of transportation over another railroad and by bus service, the public utilities commission erred in denying the railroad's application to discontinue passenger trains and to substitute in lieu thereof mixed trains consisting of a passenger car and a baggage car on existing freight trains. In re *Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

—Right to.

By the running of a mixed train consisting of freight and passenger cars, a railroad does not discharge its duties to the public of furnishing transportation to passengers under all circumstances and in all cases. In re *Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

During war emergency inconvenience of the public because of discontinuance of passenger trains on a railroad is a subordinate matter to national defense. In re *Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

—Suspension or Abandonment.

Public utilities commission has power to make an order permitting telephone company to eliminate four-party service. *Coeur d'Alene v. Public Utilities Comm'n*, 29 Idaho 508, 160 P. 751 (1916).

Where a system of railroads under one management is solvent and prosperous, it cannot escape performance of its charter duty of furnishing transportation over one portion of its road by showing that such portion does not pay, when all parts of the system are so interwoven that an accurate ascertainment of the profits of any one portion of the road is impracticable. In re *Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

No fixed and definite rule can be applied in determining whether or not a railroad is en-

titled to discontinue a portion of its service and substitute in lieu thereof a different class of service, but each case must be considered in the light of all of its facts. In re Union Pac. R.R., 64 Idaho 597, 134 P.2d 1073 (1943).

—Unreasonable and Unjust Economic Loss.

If passenger service furnished by railroad is in all respects adequate, efficient, just and reasonable as required by statute, it is neither just nor reasonable to impose an unreasonable and unjust economic loss on the railroad, and, indirectly, on the public, to require unnecessary and useless expenditures. In re Union Pac. R.R., 64 Idaho 597, 134 P.2d 1073 (1943).

Where a railroad applies to abandon pas-

senger service on branch lines and to substitute in lieu thereof mixed trains consisting of passenger and baggage cars on existing freight trains, it is the duty of the public utilities commission to consider the inconvenience the public would suffer by reason of such change in service by transmitting mail, express, and baggage, as well as passengers on the same train. In re Union Pac. R.R., 64 Idaho 597, 134 P.2d 1073 (1943).

Cited in: Bunker Hill Co. v. Washington Water Power Co., 98 Idaho 249, 561 P.2d 391 (1977); Citizens Utils. Co. v. Idaho Pub. Utils. Comm'n, 99 Idaho 164, 579 P.2d 110 (1978); Afton Energy, Inc. v. Idaho Power Co., 107 Idaho 781, 693 P.2d 427 (1984).

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Utilities, §§ 26 to 32, 136 to 138.

61-308. Schedules — Joint rates. — The names of the several public utilities which are parties to any joint tariff, rate, fare, toll contract, classification or charge shall be specified in the schedule or schedules showing the same. Unless otherwise ordered by the commission, a schedule showing such joint tariff, rate, fare, toll, contract, classification or charge need be filed with the commission by only one (1) of the parties to it: provided, that there is also filed with the commission in such form as the commission may require a concurrence in such joint tariff rate, fare, toll, contract, classification or charge by each of the other parties thereto.

History.

1913, ch. 61, § 15, p. 247; compiled and

reen. C.L. 106:51; C.S., § 2418; I.C.A., § 59-308.

61-309. Schedules — Filing by common carriers a precedent to do business. — No common carrier subject to the provisions of this act shall engage or participate in the transportation of persons or property, between points within this state, until its schedules of rates, fares, charges and classifications shall have been filed and published in accordance with the provisions of this act.

History.

1913, ch. 61, § 16a(1), p. 247; reen. 1915, ch. 113, § 1, subd. 16a(1), p. 257; compiled

and reen. C.L. 106:52; C.S., § 2419; I.C.A., § 59-309.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-310. Only schedule rates to be charged. — No common carrier except as in this act otherwise provided shall charge, demand, collect or receive a greater or less or different compensation for the transportation of persons or property, or for any service in connection therewith than the rates, fares and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares or charges so specified except upon order of the commission as hereinafter provided, nor extend to any corporation or person any privilege or facility in the transportation of passengers or property except such as are regularly and uniformly extended to all corporations and persons.

History. ch. 113, § 1, subd. 16a(2), p. 258; reen. C.L. 1913, ch. 61, § 16a(2), p. 247; reen. 1915, 106:53; C.S., § 2420; I.C.A., § 59-310.

STATUTORY NOTES

Compiler's Notes. 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

JUDICIAL DECISIONS

Not Applicable to Counties. view of § 61-312. *Boise Valley Traction Co. v. Ada County*, 38 Idaho 350, 222 P. 1035 (1923).
This provision is not binding on counties, in

61-311. Passes — Restricted to certain persons. — No common carrier shall directly or indirectly issue or give any free ticket, free pass or free transportation for passengers except to its employees and their families, its officers, agents, surgeons, physicians and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of national homes or state homes for disabled volunteer soldiers, and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge; to veterans of the civil war; to necessary caretakers of livestock, poultry, milk and fruit; to employees on sleeping cars, express cars and to linemen of telegraph and telephone companies; to railway mail service employees, post-office inspectors, customs inspectors and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested; to persons injured in wrecks and physicians and nurses attending such persons: provided, that this provision shall not be construed to prohibit the interchange of passes for the officers, agents and employees of common carriers, and their families, nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence or other

calamitous visitations: provided further, that these provisions shall not be construed to prohibit the privilege of passes or franks, or the exchange thereof, with each other, for the officers, agents, employees, and their families, of telegraph, telephone and cable lines, and the officers, agents, employees, and their families of common carriers, subject to the provisions of this act: provided further, that the term "employees" as used in this paragraph shall include furloughed, pensioned and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier, and ex-employees traveling for the purpose of entering the service of any such common carrier, and the term "families" as used in this paragraph shall include the families of those persons named in this proviso; also the families of persons killed, and the widows during widowhood and the minor children during minority, of persons who died while in the service of any such common carrier: provided further, that nothing herein contained shall prevent the issuance of mileage and commutation tickets or excursion passenger tickets: provided further, that nothing in this section shall be construed to prevent the issuance of free or reduced transportation by any street railroad company for mail carriers or policemen or members of fire departments of any municipality or other department of the government: provided further, that it shall also be lawful for any common carrier to issue a free ticket or other form of transportation to former employees who have been in the employ of such common carrier for a period of not less than twenty (20) years and to those dependent upon such former employees.

History.

1913, ch. 61, § 16a(3), p. 247; am. 1915, ch. 113, § 1, subd. 16a(3), p. 258; compiled and

reen. C.L. 106:54; C.S., § 2421; am. 1923, ch. 68, § 1, p. 74; I.C.A., § 59-311.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to

61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

Effective Dates.

Section 3 of S.L. 1923, ch. 68 declared an emergency. Approved February 26, 1923.

61-312. Property handled free — Reduced rates for dependents.
— Nothing in this act shall prevent the carriage, storage or handling of property free or at reduced rates for the United States, state, county or municipal governments, or for charitable purposes, or for relief in cases of general epidemic, pestilence or other calamitous visitation, or property to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the national homes or state homes for

disabled volunteer soldiers, and of soldiers' and sailors' orphan homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes, or to veterans of the civil war; nothing in this act shall be construed to prevent a common carrier from transporting, storing or handling free or at reduced rates the household goods and personal effects of its employees, or persons entering or leaving its service, and of persons killed or dying while in its service, or exchanging passes or tickets with other railroad companies for their officers and employees; nothing in this act shall prevent the issuance of joint interchangeable mileage tickets, with special privileges as to the amount of free baggage that may be carried under such mileage tickets: provided further, that passenger transportation may issue to the proprietors and employees of newspapers and magazines and the members of their immediate families, in exchange for advertising space in such newspapers or magazines at full rates, subject, however, to such reasonable restrictions as the commission may impose.

History. 113, § 1, subd. 16a(4), p. 259; reen. C.L. 1913, ch. 61, § 16a(4), p. 247; am. 1915, ch. 106:57; C.S., § 2424; I.C.A., § 59-312.

STATUTORY NOTES

Compiler's Notes. 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

JUDICIAL DECISIONS

Construction. 4 classes, and it does not give those in the excepted classes the right to fix the rate themselves. *Boise Valley Traction Co. v. Ada County*, 38 Idaho 350, 222 P. 1035 (1923).

This section contemplates the fixing of a reduced rate by agreement between the carrier and a government within the excepted

61-313. Schedule charges only permitted. — Except as in this act otherwise provided, no public utility shall charge, demand, collect or receive a greater or less or different compensation from any product or commodity furnished or to be furnished or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals and charges so specified nor extended to any corporation or person any form of contract or agreement or any rule or regulation of any facility or privilege except such as are specified in such schedules and as are regularly and uniformly extended to all corporations and persons: provided, that messages by telephone or cable, subject to the provisions of this act, may be classified by the utility into day, night, repeated, unrepeatd, letter, commercial, press, government and such other classes of messages: provided further, that nothing in this chapter shall be construed to prevent telephone and

cable companies from entering into contract with common carriers for the exchange of service at rates common to all common carriers of like class.

History.

1913, ch. 61, § 16b, p. 247; reen. 1915, ch. 113, § 1, subd. 16b, p. 260; reen. C.L. 106:58;

C.S., § 2425; I.C.A., § 59-313; am. 1984, ch. 106, § 1, p. 246.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-314. Schedule of rates within and without state. — Every common carrier and every telephone corporation shall print and file or cause to be filed with the commission, schedules showing all rates, fares, tolls, rentals, charges and classifications for the transportation of persons or property or the transmission of messages or conversations between all points within this state and all points without the state upon its route, and between all points within this state and all points without the state upon every route leased, operated or controlled by it, and between all points on its route or upon any route, leased, operated or controlled by it within this state and all points without the state upon the route of any other common carrier or telephone corporation whenever a through route and joint rate shall have been established between any two (2) such points.

History.

1913, ch. 61, § 17, p. 247; reen. C.L. 106:59;

C.S., § 2426; I.C.A., § 59-314; am. 1984, ch. 106, § 2, p. 246.

61-315. Discrimination and preference prohibited. — No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service. The commission shall have the power to determine any question of fact arising under this section.

History.

1913, ch. 61, § 18, p. 247; reen. C.L. 106:60; C.S., § 2427; I.C.A., § 59-315.

STATUTORY NOTES

Cross References.

Unequal transportation rates, Idaho Const., Art. XI, § 6.

JUDICIAL DECISIONS

ANALYSIS

Criteria for differentiation.
Discrimination.
—Reasonableness.
Discriminatory collection.
Jurisdiction of commission.
Not applicable to counties.
Rates.

Criteria for Differentiation.

As between classes of service, whether those classes be as between schedules or as between customers within a schedule, valid considerations for rate differentiation are the quantity of the utility used, the nature of the use, the time of use, the pattern of use, the differences in the conditions of service, the costs of service, the reasonable efficiency and economy of operation, the actual differences in the situation of the consumers for the furnishing of the service, contribution to peak load, costs of service on peak demand days, costs of storage and economic incentives; one criterion is not necessarily more essential than another nor is the list of criteria exclusive. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981).

Discrimination.

Furnishing water to one who does not pay regular rate paid by other users of supply is positively prohibited. *Rowland v. Kellogg Power & Water Co.*, 43 Idaho 643, 253 P. 840 (1927).

An order of the public utility commission imposing a nonrecurring charge of \$50.00 per kilowatt on the installation of or conversion to electric space heating after a fixed date exceeded the commission's authority to fix and regulate rates, since it discriminatorily differentiated between classes of new and old customers without reference to the pattern, nature, and time of usage, quantity, cost of service, or difference in condition of service as between the two classes. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984).

In view of the fact that the commission is not required to create equality of rates among classes of the utility's customers if the rates set are reasonable, the commission's order granting a 4.4% increase for residential service, a 10.3% increase for most other rate schedules, and a 16% increase for irrigation and soil drainage pumping service was reasonable and proper where exhibits showed that irrigation users produced a lower rate of return than other customers. *Grindstone Butte Mut. Canal Co. v. Idaho Power Co.*, 98 Idaho 860, 574 P.2d 902 (1978).

Differences in rates charged to different classes of customers is not per se unreasonable or unlawful. *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 597 P.2d 1058 (1979).

Modification of electric power company's line extension tariff to be set on a per single-phase transformer basis, rather than on a per lot basis, did not violate this section with respect to line extensions in and outside of subdivisions or with respect to new and old customers. *Bldg. Contrs. Ass'n v. Idaho PUC*, 151 Idaho 10, 253 P.3d 684 (2011).

—Reasonableness.

A rate scale under which large volume "firm service" natural gas users pay a minimum monthly charge plus the commodity charge for gas actually used, whereas others including large volume interruptible customers, are credited for the amounts actually used against their minimum monthly charges, so that their bills are the higher of (1) actual use or (2) the minimum charge, and not both, is not an "unreasonable difference" within the meaning of this section and must be sustained. *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 597 P.2d 1058 (1979).

This section bars only unreasonable differences as to rates and grants the commission power to determine what constitutes unreasonable rate discrimination. *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 597 P.2d 1058 (1979).

A reasonable classification of utility customers may justify the setting of different rates and charges for the different classes of customers; any such difference in a utility's rates and charges must be justified by a corresponding classification of customers that is based upon factors such as cost of service, quantity of electricity used, differences in conditions of service, or the time, nature and pattern of the use. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984).

The supreme court's review of whether the evidence presented to the public utilities commission is competent and substantial must be tempered by a consideration of whether a proposed new rate structure is also just and reasonable as required by § 61-301, this sec-

tion and § 61-502. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981).

Where the public utilities commission revised rates without hearing evidence on the cost of service analysis, the rates were not unjust and unreasonable under § 61-301, this section and § 61-502, since, although cost of service is an important criterion which in certain cases may be largely dispositive, it is not a per se essential element without which rate making is invalid. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981).

Discriminatory Collection.

The public utilities commission order, which prohibited the water company from collecting any bills more than one month in arrears as of the date of the order, discriminated against those customers who were diligent in the payment of the water bills and was illegal. *McGuire Estates Water Co. v. Idaho Pub. Utils. Comm'n*, 111 Idaho 341, 723 P.2d 885 (1986).

Where cost of servicing all water customers increased due to several factors including passage of a federal act, court held no particular group of customers should bear the burden of additional expense occasioned by changes in federal law that imposed new water quality standards; as such, it was unlawfully discriminatory to charge new customers hook-up fees based on an allocation of the incremental cost of new plant construction required by growth and passage of the federal act, while not assessing any charges to existing customers. *Building Contractors Ass'n v. Idaho Public Utils. Comm'n*, 128 Idaho 534, 916 P.2d 1259 (1996).

Jurisdiction of Commission.

Public utilities commission, in the exercise of its authority to see that rates, both as a whole and for each particular service, are just to the utility and reasonable to the consumer, and nondiscriminatory as between consumers, may not only fix rates for each class, but may classify. *Idaho Power Co. v. Thompson*, (1927) (various rate-making principles discussed and applied).

The commission had authority to fix utility rates which would supersede rates previously fixed by private contract, but, before the commission could increase electric service rates charged to an industrial customer under a special service contract, it was required to find specifically that the different rate was

unreasonable and adverse to the public interest. *Agricultural Prods. Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 557 P.2d 617 (1976).

The public utilities commission cannot abrogate the terms of a contract in order to create uniform rates unless it first examines all relevant factors of service to comparable customers and expressly finds that a continuation of the rate specified in the contract would be adverse to the public interest. *Bunker Hill Co. v. Washington Water Power Co.*, 98 Idaho 249, 561 P.2d 391 (1977).

Where one of two telephone companies bound by a long-distance toll division agreement issued credit cards to persons outside its own service area who were employed by its parent corporation, the court refused to adopt the position that settlement amounts paid to such company when the credit cards were used outside its service area had the effect of lowering the parent corporation's rates and, thereby, constituted unreasonable discrimination under this section, since to adopt such a position would give the commission jurisdiction over any revenue producing procedure as long as one customer held stock in the utility. *Lemhi Tel. Co. v. Mountain States Tel. & Tel. Co.*, 98 Idaho 692, 571 P.2d 753 (1977).

Not Applicable to Counties.

This provision is not binding on counties, in view of § 61-312. *Boise Valley Traction Co. v. Ada County*, 38 Idaho 350, 222 P. 1035 (1923).

Rates.

The public utilities commission is not under a duty to set rates for different classes of customers which are either equal or uniform provided the rates set are just and reasonable. *FMC Corp. v. Idaho Pub. Utils. Comm'n*, 104 Idaho 265, 658 P.2d 936 (1983).

Since the commission has power to regulate and fix charges and rates, but a utility is enjoined from establishing rates or charges which are preferential or discriminatory, it follows by implication that the commission's authority may only be exercised in such a way as to fix nondiscriminatory, and nonpreferential rates and charges. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984).

Cited in: *In re Pacific Tel. & Tel. Co.*, 71 Idaho 476, 233 P.2d 1024 (1951); *Afton Energy, Inc. v. Idaho Power Co.*, 107 Idaho 781, 693 P.2d 427 (1984); *General Tel. Co. v. Idaho Pub. Utils. Comm'n*, 109 Idaho 942, 712 P.2d 643 (1986); *Hulet v. Idaho PUC*, 138 Idaho 476, 65 P.3d 498 (2003).

RESEARCH REFERENCES

A.L.R. — Racial or religious discrimination in furnishing of public utilities, service or facilities. 53 A.L.R.3d 1027.

61-315A. Certain inverted residential electrical rate structures prohibited — Expiration. — All inverted rate structures imposed on residential electric customers which have not been formally approved by the commission prior to July 1, 1981, are hereby prohibited effective July 1, 1982. The prohibition provided herein shall automatically expire July 1, 1984, unless extended by further action of the legislature.

History.
I.C., § 61-315A, as added by 1982, ch. 370,
§ 1, p. 929.

STATUTORY NOTES

Effective Dates. Section 2 of S.L. 1982, ch. 370 declared an emergency. Became law without the governor's signature, April 5, 1982.

61-316. Profits. — Nothing in this act shall be taken to prohibit any public utility from itself profiting, to the extent permitted by the commission, from any economies, efficiencies or improvements which it may make, and from distributing by way of dividends or otherwise disposing of the profits to which it may be so entitled, and the commission is authorized to make or permit such arrangement or arrangements with any public utility as it may deem wise for the purpose of encouraging economies, efficiencies, or improvements and securing to the public utility making the same such portion, if any, of the profits thereof, as the commission may determine.

History.
1913, ch. 61, § 19, p. 247; reen. C.L. 106:61;
C.S., § 2428; I.C.A., § 59-316.

STATUTORY NOTES

Compiler's Notes. The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

ANALYSIS

Profits.
Rate of return.

Profits.
If stockholders prefer to apply net revenue to payment of exorbitant salaries rather than to payment of dividends they have the right to do so. Couer d'Alene v. Public Utils. Comm'n, 29 Idaho 508, 160 P. 751 (1916).

Rate of Return.
Relation established by law between utility

and consumer is that consumer must pay fair return on value of assets reasonably acquired and necessary for accomplishment of utility's object. Federal Mining & Smelting Co. v. Public Utils. Comm'n, 26 Idaho 391, 143 P. 1173 (1914).

61-317. Sliding scale of charges — Automatic adjustment. —

Nothing in this act shall be taken to prohibit a corporation or person engaged in the production, generation, transmission or furnishing of heat, light, water or power, or telephone service, from establishing a sliding scale of charges: provided, that a schedule showing such scale of charges shall first have been filed with the commission and such schedule and each rate set out therein approved by it. Nothing in this act shall be taken to prohibit any such corporation or person from entering into an arrangement for a fixed period for the automatic adjustment of charges for heat, light, water or power or telephone service, in relation to the dividends to be paid to stockholders of such corporation, or the profit to be realized by such person: provided, that a schedule showing the scale of charges under such arrangements shall first have been filed with the commission and such schedule and each rate set out therein approved by it. Nothing in this section shall prevent the commission from revoking its approval at any time and fixing other rates and charges for the product or commodity or service, as authorized by this act.

History.

1913, ch. 61, § 20, p. 247; reen. C.L. 106:62;

C.S., § 2429; I.C.A., § 59-317; am. 1984, ch. 106, § 3, p. 246.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-318. Interchange of traffic — Duty of establishing joint rates.

— Every common carrier shall afford all reasonable, proper and equal facilities for the prompt and efficient interchange and transfer of passengers, tonnage and cars, loaded or empty, between the lines owned, operated, controlled or leased by it, and the lines of every other common carrier, and shall make such interchange and transfer promptly without discrimination between shippers, passengers or carriers either as to compensation charged, service rendered or facilities afforded. Every railroad corporation shall receive from every other railroad corporation at any point of connection, freight cars of proper standard and in proper condition, and shall haul the same either to destination, if the destination be upon the lines owned, operated or controlled by such railroad corporation, or to a point of transfer according to route billed, if the destination be upon the line of some other railroad corporation.

Nothing in this section contained shall be construed as in any other wise limiting or modifying the duty of a common carrier to establish joint rates, fares and charges for the transportation of passengers and property over the lines owned, operated, controlled or leased by it and the lines of other common carriers nor as in any manner limiting or modifying the power of the commission to require the establishment of such joint rates, fares and charges.

History.

1913, ch. 61, § 21a, p. 247; reen. C.L. 106:63; C.S., § 2430; I.C.A., § 59-318.

JUDICIAL DECISIONS**Dock a Public Facility.**

Where a railroad company acquired twenty acres of station grounds under the provisions of the act of congress of March 3, 1875, chapter 152, 18 Stat. 482 (U.S.C. tit. 43, §§ 934 to 939), for occupation and use as a common carrier, and such grounds were so situated as to abut upon a navigable lake or body of water, and such company constructed thereon a dock or wharf for use in receiving and discharging freight and passengers from boats and for forwarding through freight and passengers, and the same was, in fact, used

both in carrying on through business and local business, such dock or wharf was a public "facility" for the transportation of freight and passengers within the purview and meaning of Idaho Const., Art. XI, § 6, and such railroad company could not make any undue or unreasonable discrimination between competing boat lines engaged in the same kind or class of business with such railroad company. *Coeur d'Alene & St. Joe Transp. Co. v. Ferrell*, 22 Idaho 752, 128 P. 565 (1912).

61-319. Interchange of telephone messages. — Every telephone corporation operating in this state shall receive, transmit, and deliver, without discrimination or delay, the conversations and messages of every other telephone corporation with whose line a physical connection may have been made, or ordered by the commission.

History.

1913, ch. 61, § 21b, p. 247; reen. C.L.

106:64; C.S., § 2431; I.C.A., § 59-319; am. 1984, ch. 106, § 4, p. 246.

STATUTORY NOTES**Cross References.**

Unlawful for telegraph or telephone com-

pany to refuse to accept and transmit messages to their final destination, § 62-801.

61-320. False billing — Transportation at less than scheduled rates prohibited. — No common carrier, or any officer or agent thereof, or any person acting for or employed by it, shall, by means of known false billing, classification, weight, weighing or report of weight, or by any other device or means, assist, suffer or permit any corporation or person to obtain transportation for any person or property between points within this state at less than the rates and fares then established and in force as shown by the schedules filed and in effect at the time. No person or corporation, or any officer, agent, or employee of a corporation shall, by means of false billing, false or incorrect classification, false weight or weighing, false representation as to contents or substances of a package, or false report or statement of weight, or by any other device or means, whether with or without the consent or connivance of a common carrier or any of its officers, agent or employees, seek to obtain or obtain such transportation for such property at less than the rates then established and in force therefor.

History.

1913, ch. 61, § 22a, p. 247; compiled and

reen. C.L. 106:65; C.S., § 2432; I.C.A., § 59-320.

61-321. False claim for damages. — No person or corporation, or any

officer, agent or employee of a corporation, shall knowingly, directly or indirectly, by any false statement or representation as to cost or value, or the nature or extent of an injury, or by the use of any false billing, bill of lading, receipt, voucher, roll, accounts, claim, certificate, affidavit or deposition, or upon any false, fictitious or fraudulent statement or entry, obtain or attempt to obtain any allowance, rebate, or payment for damage in connection with or growing out of the transportation of persons or property, or an agreement to transport such persons or property, whether with or without the consent or connivance of a common carrier or any of its officers, agents or employees; nor shall any common carrier, or any officer, agent or employee thereof, knowingly pay or offer to pay any such allowance, rebate or claim for damage.

History.

1913, ch. 61, § 22b, p. 247; reen. C.L.
106:66; C.S., § 2433; I.C.A., § 59-321.

STATUTORY NOTES

Cross References.

Rebates or refunds prohibited, § 61-313.

61-322. Long and short haul. — No common carrier subject to the provisions of this act shall charge or receive any greater compensation in the aggregate for the transportation of persons or of a like kind of property for a shorter than for a longer distance over the same route or line in the same direction, within this state, the shorter being included within the longer distance, or charge any greater compensation as through rate than the aggregate to [of] the intermediate rates; but this shall not be construed as authorizing any such common carrier to charge or receive a greater compensation for a shorter than for a longer distance or haul over the same line or route in the same direction. Upon application to the commission such common carrier may, in special cases, after investigation, be authorized by the commission to charge less for a longer than for a shorter distance for the transportation of persons or property, and the commission may from time to time prescribe the extent to which such carrier may be relieved from the operation and requirements of this section.

History.

1913, ch. 61, § 23a, p. 247; reen. C.L.
106:67; C.S., § 2434; I.C.A., § 59-322.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to

61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

The bracketed insertion in the first sentence was added by the compiler to supply the probable intended term.

61-323. Telephone companies — Long and short distance service.
— No telephone corporation subject to the provisions of this act shall charge or receive any greater compensation in the aggregate for the transmission of any long distance message or conversation for a shorter than for a longer distance over the same line or route in the same direction, within this state, the shorter being included within the longer distance, or charge any greater compensation for a through service than the aggregate of the intermediate rates or tolls subject to the provisions of this act; but this shall not be construed as authorizing any such telephone corporation to charge and receive as great a compensation for a shorter as for a longer distance. Upon the application to the commission a telephone corporation may, in special cases, after investigation, be authorized by the commission to charge less for a longer than for a shorter distance service for the transmission of messages or conversations, and the commission may from time to time prescribe the extent to which such telephone corporation may be relieved from the operation and requirements of this section.

History. 106:68; C.S., § 2435; I.C.A., § 59-323; am.
1913, ch. 61, § 23b, p. 247; reen. C.L. 1984, ch. 106, § 5, p. 246.

STATUTORY NOTES

Cross References. 61-124 to 61-129, 61-201 to 61-214, 61-301 to
Telegraph and telephone companies, accep- 61-315, 61-316 to 61-326, 61-401, 61-403 to
tance and transmission of messages, § 62- 61-406, 61-501, 61-502, 61-503, 61-504, 61-
801 et seq. 506 to 61-515, 61-517 to 61-529, 61-601 to
Compiler's Notes. 61-617, 61-618, 61-619, 61-621, 61-622, 61-
The term "this act" refers to S.L. 1913, ch. 623 to 61-626, 61-633 to 61-638, 61-640 to
61, which is compiled as §§ 61-101 to 61-121, 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-324. Railroads — Switch connection. — Any railroad company subject to the provisions of this act, upon application of any lateral, branch line of railroad or of any shipper tendering traffic for transportation, shall construct, maintain and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad or private sidetrack, which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety, and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability, without discrimination in favor of or against any such shipper.

History.
1913, ch. 61, § 24a, p. 247; reen. C.L.
106:69; C.S., § 2436; I.C.A., § 59-324.

STATUTORY NOTES

Compiler's Notes. 61-406, 61-501, 61-502, 61-503, 61-504, 61-
The term "this act" refers to S.L. 1913, ch. 506 to 61-515, 61-517 to 61-529, 61-601 to
61, which is compiled as §§ 61-101 to 61-121, 61-617, 61-618, 61-619, 61-621, 61-622, 61-
61-124 to 61-129, 61-201 to 61-214, 61-301 to 623 to 61-626, 61-633 to 61-638, 61-640 to
61-315, 61-316 to 61-326, 61-401, 61-403 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-325. Railroads — Spurs. — Under the conditions specified in the proviso in section 61-324[, Idaho Code], every railroad corporation, upon the application of any corporation or person being a shipper or receiver or contemplated shipper or receiver of freight, or when ordered by the commission, shall construct upon its right of way a spur or spurs for the purpose of receiving and delivering freight thereby and shall receive and deliver freight thereby.

History.

1913, ch. 61, § 24b, p. 247; reen. C.L. 106:70; C.S., § 2437; I.C.A., § 59-325.

STATUTORY NOTES

Cross References.

Service spurs, § 61-511.

compiler to conform to the statutory citation style.

Compiler's Notes.

The bracketed insertion was added by the

61-326. Street and interurban railroads — Fares — Transfers. — No street or interurban railroad corporation shall charge, demand, collect or receive more than five cents (5¢) for one (1) continuous ride in the same general direction within the corporate limits of any city or village, except upon a showing before the commission that such greater charge is justified: provided, that until the decision of the commission upon such showing, a street or interurban railroad corporation may continue to demand, collect and receive the fare in effect on January 2, 1913, or at the time the commission acquires as to such corporation the power to fix fares within such city or village. Every street or interurban railroad corporation shall, upon such terms as the commission shall find to be just and reasonable, furnish to its passengers transfers entitling them to one (1) continuous trip in the same general direction over and upon the portions of its lines within the same city or village not reached by the originating car.

History.

1913, ch. 61, § 25, p. 247; reen. C.L. 106:71; C.S., § 2438; I.C.A., § 59-326.

STATUTORY NOTES

Cross References.

Street railroad defined, § 61-108.

61-327. Electric utility property — Acquisition by certain public agencies prohibited. — No title to or interest in any public utility (as such term is defined in chapter 1, title 61, Idaho Code) property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public or any portion thereof, shall be transferred or transferable to, or acquired by, directly or indirectly, by any means or device whatsoever, any government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision

or corporation, organized or existing under the laws of any other state; or any person, firm, association, corporation or organization acting as trustee, nominee, agent or representative for, or in concert or arrangement with, any such government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation; or any company, association, organization or corporation, organized or existing under the laws of this state or any other state, whose issued capital stock, or other evidence of ownership, membership or other interest therein, or in the property thereof, is owned or controlled, directly or indirectly, by any such government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation; or any company, association, organization or corporation, organized under the laws of any other state, not coming under or within the definition of an electric public utility or electrical corporation as contained in chapter 1, title 61, Idaho Code, and subject to the jurisdiction, regulation and control of the public utilities commission of the state of Idaho under the public utilities law of this state; provided, nothing herein shall prohibit the transfer of any such property by a public utility to a cooperative electrical corporation organized under the laws of another state, which has among its members mutual nonprofit or cooperative electrical corporations organized under the laws of the state of Idaho and doing business in this state, if such public utility has obtained authorization from the public utilities commission of the state of Idaho pursuant to section 61-328, Idaho Code.

History.

1951, ch. 3, § 1, p. 4; am. 1982, ch. 7, § 1, p. 10.

STATUTORY NOTES

Cross References.

Electric plant and electrical corporation defined, §§ 61-118, 61-119.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

ANALYSIS

Abandonment or forfeiture.

Acquisition of subordinated rights.

Abandonment or Forfeiture.

While the language of §§ 61-327 to 61-331 is very broad in forbidding any transfer "directly or indirectly, in any manner whatsoever" of electric utility property (§ 61-328), such sections are inapplicable to abandonment or forfeiture of a water right. If those sections were applied to abandonment or forfeiture of a water right used to generate electricity, the attorney general would be required to file an action to have such an escheat decreed, and thereafter there would be a court ordered sale of the property; such a

scheme is totally inconsistent with § 42-222(2), which provides that if a water right is abandoned or forfeited it reverts to the state, following which third parties may perfect an interest therein. *Idaho Power Co. v. State*, 104 Idaho 575, 661 P.2d 741 (1983).

Acquisition of Subordinated Rights.

Where power company acquired only subordinated water rights at Hells Canyon hydroelectric complex, there was no transfer, and §§ 61-327 to 61-331 did not apply. *Idaho Power Co. v. State*, 104 Idaho 575, 661 P.2d 741 (1983).

61-328. Electric utilities — Sale of property to be approved by commission. — (1) No electric public utility or electrical corporation as defined in chapter 1, title 61, Idaho Code, owning, controlling or operating any property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public or any portion thereof, shall merge, sell, lease, assign or transfer, directly or indirectly, in any manner whatsoever, any such property or interest therein, or the operation, management or control thereof, or any certificate of convenience and necessity or franchise covering the same, except when authorized to do so by order of the public utilities commission.

(2) The electric public utility or electrical corporation shall file a verified application setting forth such facts as the commission shall prescribe or require. The commission shall issue a public notice and shall conduct a public hearing upon the application.

(3) Before authorizing the transaction, the public utilities commission shall find:

- (a) That the transaction is consistent with the public interest;
- (b) That the cost of and rates for supplying service will not be increased by reason of such transaction; and
- (c) That the applicant for such acquisition or transfer has the bona fide intent and financial ability to operate and maintain said property in the public service.

The applicant shall bear the burden of showing that standards listed above have been satisfied.

(4) The commission shall have power to issue said authorization and order as prayed for, or to refuse to issue the same, or to issue such authorization and order with respect only to a part of the property involved. The commission shall include in any authorization or order the conditions required by the director of the department of water resources under section 42-1701(6), Idaho Code. The commission may attach to its authorization and order such other terms and conditions as in its judgment the public convenience and necessity may require.

History.

1951, ch. 3, § 2, p. 4; am. 2000, ch. 224, § 2, p. 619.

STATUTORY NOTES

Cross References.

Electric plant and electrical corporation defined, §§ 61-118, 61-119.

Effective Dates.

Section 4 of S.L. 2000, ch. 224 declared an emergency. Approved April 12, 2000.

JUDICIAL DECISIONS

Water Rights.

While the language of §§ 61-327 to 61-331 is very broad in forbidding any transfer “directly or indirectly, in any manner whatsoever” of electric utility property (§ 61-328), such sections are inapplicable to abandonment or forfeiture of a water right. If those

sections were applied to abandonment or forfeiture of a water right used to generate electricity, the attorney general would be required to file an action to have such an escheat decreed, and thereafter there would be a court ordered sale of the property; such a scheme is totally inconsistent with § 42-

222(2), which provides that if a water right is abandoned or forfeited it reverts to the state, following which third parties may perfect an interest therein. *Idaho Power Co. v. State*, 104 Idaho 575, 661 P.2d 741 (1983).

Where power company acquired only subor-

minated water rights at Hells Canyon hydro-electric complex, there was no transfer, and §§ 61-327 to 61-331 did not apply. *Idaho Power Co. v. State*, 104 Idaho 575, 661 P.2d 741 (1983).

61-329. Unlawful transfer or acquisition — Escheat. — Any such property or interest in property hereafter transferred or acquired in violation of this act shall escheat to the state of Idaho. The attorney general of the state shall institute proceedings in the district court of any county in which such property, or any portion thereof, is situated, to have such escheat adjudged and decreed. If the property is operating property, the court shall continue the operation thereof under a receiver appointed by and under the control and supervision of the court, pending final determination of the action and the sale and disposition of the property. When the court has entered judgment escheating the property to the state, the court shall thereupon order a sale of the property, or interest therein, in the same manner as prescribed by the laws of the state of Idaho for the sale of real estate under mortgage foreclosure. Out of the proceeds arising from such sale, any valid liens or claims of third parties shall be paid, and the balance shall be paid into the state treasury for the credit of the school fund [public school permanent endowment fund].

History.

1951, ch. 3, § 3, p. 4.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Public school fund, composition, § 33-902.

State treasurer, custodian of school fund, Idaho Const., Art. IX, § 3.

Compiler's Notes.

The term "this act" refers to S.L. 1951, ch. 3, which is codified as §§ 61-327 to 61-331.

The bracketed insertion at the end of this section was added by the compiler to reflect the 1998 renaming of the public school fund to the public school permanent endowment fund. See Idaho Const., Art. IX, § 3 and § 33-902.

JUDICIAL DECISIONS

Water Rights.

While the language of §§ 61-327 to 61-331 is very broad in forbidding any transfer "directly or indirectly, in any manner whatsoever" of electric utility property (§ 61-328), such sections are inapplicable to abandonment or forfeiture of a water right. If those sections were applied to abandonment or forfeiture of a water right used to generate electricity, the attorney general would be required to file an action to have such an escheat decreed, and thereafter there would be a court ordered sale of the property; such a

scheme is totally inconsistent with § 42-222(2), which provides that if a water right is abandoned or forfeited it reverts to the state, following which third parties may perfect an interest therein. *Idaho Power Co. v. State*, 104 Idaho 575, 661 P.2d 741 (1983).

Where power company acquired only subordinated water rights at Hells Canyon hydro-electric complex, there was no transfer, and §§ 61-327 to 61-331 did not apply. *Idaho Power Co. v. State*, 104 Idaho 575, 661 P.2d 741 (1983).

61-330. Evasions of act — Conclusive presumptions. — Every

conveyance or transfer of property, or any interest therein, in violation of the provisions of this act, whether voluntary or involuntary, or though colorable in form, or if made with the intent or purpose to evade or avoid the provisions of this act, shall be void as to the state, and the property or interest thereby conveyed or transferred, shall escheat to the state as in this act provided. A conclusive presumption that the conveyance or transfer is made with the intent or purpose to evade or avoid the provisions of this act shall arise upon proof of any of the following facts:

a. The purchase, acquisition or taking of the property, or interest therein, in the name of a person or party other than persons or parties referred to in section 61-327[, Idaho Code], if the consideration is paid, guaranteed or otherwise secured, or agreed or understood to be paid, guaranteed or otherwise secured, directly or indirectly, by a government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation referred to in section 61-327[, Idaho Code].

b. The taking of the property in the name of a company, association, organization or corporation, if the shares of stock therein, or other evidence of ownership, membership or other interest therein, or in the property thereof, held by any government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation, or any other company, association, organization or corporation, referred to in section 61-327[, Idaho Code], together with such shares or other evidence of ownership, membership or interest held by others but paid for, guaranteed or otherwise secured, directly or indirectly, by any such government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation, amount to a majority of the issued stock or other evidence of ownership, membership or other interest therein, or in the property thereof.

c. The purchase, acquisition or holding of the majority of the issued stock, or other evidence of ownership, membership or other interest therein, or the voting control of any such stock or other evidence of ownership, membership or interest, either directly or indirectly, by any government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation, or any other company, association, organization or corporation, referred to in section 61-327[, Idaho Code], in any company, association, organization or corporation now or hereafter owning, holding or operating any property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public or any portion thereof.

The enumeration in this section of certain presumptions shall not be construed as to preclude other presumptions or inferences that reasonably may be made as to the existence of intent or purpose to evade or avoid the provisions of this act, or escheat as provided for herein.

History.

1951, ch. 3, § 4, p. 4.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1951, ch. 3, which is codified as §§ 61-327 to 61-331.

The bracketed insertions were added by the compiler to conform to the statutory citation style.

61-331. Violation of act — Criminal penalty. — If any person, or two (2) or more persons, act, negotiate, participate, attempt, arrange or conspire to make or effect, or to receive or take, a transfer of any real or personal property used for the purposes specified in section 61-327[, Idaho Code,] or section 61-328[, Idaho Code], or of any interest therein, in violation of the prohibitions contained in section 61-327[, Idaho Code,] or of any other provision of this act, each, any or all of such persons, upon conviction thereof, shall be punished by imprisonment in the county jail or state penitentiary not exceeding two (2) years or by a fine not exceeding \$5000, or by both such fine and imprisonment.

History.

1951, ch. 3, § 5, p. 4.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1951, ch. 3, which is codified as §§ 61-327 to 61-331.

The bracketed insertions were added by the compiler to conform to the statutory citation style.

Section 6 of S.L. 1951, ch. 3 read: "All portions and provisions of this act are hereby declared to be separable. If any section, paragraph, clause or provision of this act, or the application thereof to any person or party, or under any facts or circumstances, shall be declared by the courts to be unconstitutional, inoperative or void, the remainder of this act

and its application, and the application of any such provision, to other persons or parties, or under other facts and circumstances, shall not be affected thereby. The legislature hereby declares that it would have passed this act, and each section, paragraph, clause or provision thereof, irrespective of the fact that any one or more other such provisions might be held to be unconstitutional, inoperative or void."

Effective Dates.

Section 7 of S.L. 1951, ch. 3 declared an emergency. Approved January 23, 1951.

JUDICIAL DECISIONS

Cited in: Idaho Power Co. v. State, 104 Idaho 575, 661 P.2d 741 (1983).

61-332. Purpose of electric supplier stabilization act. — (1) This act includes sections 61-332 through 61-334C, Idaho Code, and shall be referred to herein as "this act" and may be cited and referred to as the "Electric Supplier Stabilization Act."

(2) This act and its amendments are designed to promote harmony among and between electric suppliers furnishing electricity within the state of Idaho, prohibit the "pirating" of consumers of another electric supplier, discourage duplication of electric facilities, actively supervise certain conduct of electric suppliers as it relates to this act, and stabilize the territories and consumers served with electricity by such electric suppliers.

History.

I.C., § 61-332, as added by 1970, ch. 141,

§ 2, p. 417; am. 2000, 1st Ex. Sess., ch. 1, § 2, p. 3; am. 2001, ch. 29, § 3, p. 35.

STATUTORY NOTES**Cross References.**

Duty to obtain certificate of convenience and necessity, § 61-526.

Prior Laws.

Former § 61-332, which comprised S.L. 1957, ch. 133, § 1, p. 226, was repealed by S.L. 1970, ch. 141, § 1.

Legislative Intent.

Section 1 of S.L. 2000, 1st Ex. Sess., § 1 read: "The provision of a safe and reliable supply of electricity in a manner that prohibits the 'pirating' of consumers and discourages duplication of facilities is essential to the well-being of Idaho's citizens and its economy. It was for these and other reasons that the legislature passed the Electric Supplier Stabilization Act in 1970. The legislature has been advised of federal antitrust litigation alleging that conformance with the provisions of this act does not confer federal antitrust immunity upon parties in compliance with the act. The legislature finds that a negative judicial ruling would have the effect of repealing applicable provisions of the act, undercutting the purposes for which this act was

enacted. It is and has been the intention of the legislature to confer antitrust immunity upon parties acting in compliance with the act under what is known as the state action doctrine. While the legislature believes that compliance with the existing provisions of this act confers such immunity, it has determined to amend the act to more fully address this issue. The legislature therefore finds that it is in the public interest to enact the following amendments."

Compiler's Notes.

2000 1st Ex. Sess., ch. 1 made some changes to this section, effective December 8, 2000, and others effective March 1, 2001. However, S.L. 2001, ch. 29 § 1 repealed 2000 1st Ex. Sess., ch. 1 effective February 28, 2001. Consequently, the 2000 1st Ex. Sess., ch. 1 changes that were effective December 8, 2000, were repealed effective February 28, 2001, and the changes that were to take effect March 1, 2001, never took effect.

Effective Dates.

Section 16 of S.L. 2001, ch. 29 declared an emergency. Approved February 28, 2001.

JUDICIAL DECISIONS**ANALYSIS**

In general.

Pirating.

In General.

The electric supplier stabilization act (ESSA) was not intended to provide consumers with an express statutory mechanism by which they would be able to take their disputes with one or more utilities before the public utilities commission (IPUC), nor was it intended to provide an alternative forum for disputes between two public utilities more appropriately heard by the IPUC. Rather, the legislature's purpose was to vest district courts with jurisdiction to address service territory disputes between utilities and either cooperatives or (later) municipalities not subject to the jurisdiction of the IPUC. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 112 Idaho 10, 730 P.2d 930 (1986), cert. denied, 484 U.S. 801, 108 S. Ct. 44, 98 L. Ed. 2d 9 (1987).

State had a significant and legitimate public purpose in passing amended legislation shielding the electric power company from a federal antitrust violation: the prohibiting of

unrestrained competition for retail electric customers and the avoidance of the wasteful duplication of electrical suppliers; accordingly, the electricity retailer could not show that the electric power company violated the law in acting in an anti-competitive manner in its dealing with the electricity retailer. *Snake River Valley Elec. Ass'n v. PacifiCorp*, 357 F.3d 1042 (9th Cir.), cert. denied, 543 U.S. 956, 125 S. Ct. 416, 160 L. Ed. 2d 317 (2004).

Pirating.

The term "pirating," as used under the Idaho electric supplier stabilization act (IESSA) (§ 61-332 et seq.) means providing electrical service to a customer who is receiving electricity from another electrical supplier or who had previously received electricity from that supplier. *Kootenai Elec. Coop. v. Washington Water Power Co.*, 127 Idaho 432, 901 P.2d 1333 (1995).

Cited in: *Snake River Valley Elec. Ass'n v. PacifiCorp*, 238 F.3d 1189 (9th Cir. 2001).

61-332A. Definitions for electric supplier stabilization act. — As used in this act, unless the context requires otherwise:

(1) “Public utility” means an electric utility regulated by the Idaho public utilities commission.

(2) “Cooperative” means a cooperative corporation furnishing electric service in the state of Idaho to its consumer-members who own and operate the cooperative.

(3) “Municipality” means any municipal corporation or quasi-municipal corporation furnishing electric service to the consumers of the municipality in the state of Idaho.

(4) “Electric supplier” means any public utility, cooperative, or municipality supplying or intending to supply electric service to a consumer.

(5) “Electric service” means electricity furnished to an ultimate consumer by an electric supplier.

(6) “Consumer” is any person, firm, corporation, or other entity receiving or intending to receive electric service at a specific service entrance.

(7) “Service entrance” means the location on the consumer’s property where the consumer’s main disconnect switch, fuses or other disconnect equipment exists, and which are intended to provide the means of cutoff of the supply.

(8) “New service entrance” means a service entrance not previously served with electricity. A change, improvement, replacement, enlargement, or change in location of a service entrance shall not be deemed a “new service entrance” if utilized to serve any service or utilization equipment previously served with electricity from the former service entrance, but for the provisions of this act shall be deemed the former “service entrance.” A change in consumer shall not be construed to make an existing service entrance a “new service entrance.” A change, enlargement, or other modification of service or utilization equipment served from an existing service entrance shall not be construed to make it a “new service entrance.”

(9) “Transmission line,” for the purposes of this act, means any electric line of an electric supplier carrying a voltage of sixty-nine (69) KV or more.

(10) “Service line,” for the purposes of this act, means any single or multi-phase electric line of an electric supplier used for carrying less than sixty-nine (69) KV and used or capable of use to provide electric service for a consumer.

(11) “Existing service line” means any electric service line in existence at the time of the event in question and constructed to supply a consumer that could be lawfully served by that electric supplier under this act. It shall not mean any service line constructed to obtain an advantage under this act, or to evade its purpose or terms.

(12) “Commission” means the Idaho public utilities commission.

History.

I.C., § 61-332A, as added by 1970, ch. 141,

§ 3, p. 417; am. 2000, 1st Ex. Sess., ch. 1, § 3, p. 3; am. 2001, ch. 29, § 4, p. 35.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2000, 1st Ex. Sess., § 1 read: "The provision of a safe and reliable supply of electricity in a manner that prohibits the 'pirating' of consumers and discourages duplication of facilities is essential to the well-being of Idaho's citizens and its economy. It was for these and other reasons that the legislature passed the Electric Supplier Stabilization Act in 1970. The legislature has been advised of federal antitrust litigation alleging that conformance with the provisions of this act does not confer federal antitrust immunity upon parties in compliance with the act. The legislature finds that a negative judicial ruling would have the effect of repealing applicable provisions of the act, undercutting the purposes for which this act was enacted. It is and has been the intention of the legislature to confer antitrust immunity upon parties acting in compliance with the act under what is known as the state action doctrine. While the legislature believes that compliance with the existing provisions of this act confers such immunity, it has deter-

mined to amend the act to more fully address this issue. The legislature therefore finds that it is in the public interest to enact the following amendments."

Compiler's Notes.

2000 1st Ex. Sess., ch. 1 made some changes to this section, effective December 8, 2000, and others effective March 1, 2001. However, S.L. 2001, ch. 29 § 1 repealed 2000 1st Ex. Sess., ch. 1 effective February 28, 2001. Consequently, the 2000 1st Ex. Sess., ch. 1 changes that were effective December 8, 2000, were repealed effective February 28, 2001, and the changes that were to take effect March 1, 2001, never took effect.

For meaning of the term "this act," see § 61-332.

Effective Dates.

Section 16 of S.L. 2001, ch. 29 declared an emergency. Approved February 28, 2001.

Section 22 of S.L. 2001, 1st Ex. Sess., ch. 1 declared an emergency. Approved December 8, 2000.

JUDICIAL DECISIONS

Existing Service Line.

In an action between two electric suppliers regarding who has the right to supply electricity to new consumers, the supplier with the closest "existing service line" to the consumer's new service entrance is usually entitled to serve the new consumer; however, where evidence shows that a supplier constructed a "feeder tie" in order to obtain an advantage, the feeder tie does not fall within

the definition of "service line in existence at the time," pursuant to subsection 11 of this section, regardless of proof that the feeder tie was installed for legitimate reasons. *Kootenai Elec. Coop. v. Washington Water Power Co.*, 127 Idaho 432, 901 P.2d 1333 (1995).

Cited in: *Snake River Valley Elec. Ass'n v. PacifiCorp*, 238 F.3d 1189 (9th Cir. 2001).

61-332B. Electric supplier prohibited from serving consumers or former consumers of another electric supplier. — No electric supplier shall supply or furnish electric service to any electric service entrance that is then or had at any time previously been lawfully connected for electric service to facilities of another electric supplier except as provided in this act.

History.

I.C., § 61-332B, as added by 1970, ch. 141,

§ 4, p. 417; am. 2000, 1st Ex. Sess., ch. 1, § 4, p. 3; am. 2001, ch. 29, § 5, p. 35.

STATUTORY NOTES

Prior Laws.

Former § 61-332B, which comprised I.C., § 61-332B, as added by 1970, ch. 141, § 4, p. 417; am. 2000, 1st Ex. Sess., ch. 1, § 4, was repealed by S.L. 2000, 1st Ex. Sess., ch. 1, § 13, effective March 1, 2001.

Legislative Intent.

Section 1 of S.L. 2000, 1st Ex. Sess., § 1

read: "The provision of a safe and reliable supply of electricity in a manner that prohibits the 'pirating' of consumers and discourages duplication of facilities is essential to the well-being of Idaho's citizens and its economy. It was for these and other reasons that the legislature passed the Electric Supplier Stabilization Act in 1970. The legislature has

been advised of federal antitrust litigation alleging that conformance with the provisions of this act does not confer federal antitrust immunity upon parties in compliance with the act. The legislature finds that a negative judicial ruling would have the effect of repealing applicable provisions of the act, undercutting the purposes for which this act was enacted. It is and has been the intention of the legislature to confer antitrust immunity upon parties acting in compliance with the act under what is known as the state action doctrine. While the legislature believes that compliance with the existing provisions of this act confers such immunity, it has determined to amend the act to more fully address this issue. The legislature therefore finds that it is in the public interest to enact the following amendments."

Compiler's Notes.

For meaning of the term "this act", see § 61-332.

2000 1st Ex. Sess., ch. 1 made some changes to this section, effective December 8, 2000, and others effective March 1, 2001. However, S.L. 2001, ch. 29 § 1 repealed 2000 1st Ex. Sess., ch. 1 effective February 28, 2001. Consequently, the 2000 1st Ex. Sess., ch. 1 changes that were effective December 8, 2000, were repealed effective February 28, 2001, and the changes that were to take effect March 1, 2001, never took effect.

Effective Dates.

Section 22 of S.L. 2000, 1st Ex. Sess., ch. 1 declared an emergency. Approved December 8, 2000.

Section 16 of S.L. 2001, ch. 29 declared an emergency. Approved February 28, 2001.

JUDICIAL DECISIONS

ANALYSIS

Feeder tie construction.

Immunity from federal antitrust scrutiny.

Feeder Tie Construction.

Fact that the feeder tie line was built in accord with various engineering and prudent utility practices does not mean that a court is precluded from considering the electric supplier's motives for moving it. Otherwise, if an electric supplier seeks to gain service territory all it need do is construct a feeder tie through the territory and then prove that the line has an engineering purpose. Such an approach does not further the purpose of the legislature as set forth in this section. *Kootenai Elec. Coop. v. Washington Water Power Co.*, 127 Idaho 432, 901 P.2d 1333 (1995).

Even though power company did show that it had legitimate reasons for installing the feeder tie through the industrial park, one of its significant purposes was to obtain an advantage over second power company, and, thus, the feeder line cannot be considered an existing service line in order to determine which supplier's lines are nearest to the new service entrance for selecting which supplier has the right to supply the new consumers. *Kootenai Elec. Coop. v. Washington Water Power Co.*, 127 Idaho 432, 901 P.2d 1333 (1995).

Although the electric supplier stabilization act authorized a power utility to refuse to allow a non-profit cooperative to use the power utility's transmission facilities, the state action immunity doctrine did not bar the cooperative from bringing an action under the

federal antitrust statutes, because the act allows an electric supplier to define its service territory solely by consent and without any state supervision whatsoever. *Snake River Valley Elec. Ass'n v. PacifiCorp*, 238 F.3d 1189 (9th Cir. 2001).

Immunity From Federal Antitrust Scrutiny.

The contemporary two-step test for determining whether an alleged state-sponsored restraint of competition is immune from federal antitrust scrutiny is that the challenged restraint must be (1) clearly articulated, and (2) actively supervised by the state. *Snake River Valley Elec. Ass'n v. PacifiCorp*, 238 F.3d 1189 (9th Cir. 2001).

The district court correctly concluded that the electric supplier stabilization act (ESSA) clearly expresses a policy to displace competition among electrical suppliers so that the first prong of the two-step test for determining whether an alleged state-sponsored restraint of competition is immune from federal antitrust scrutiny was satisfied, because this prong is satisfied when a state's policy permits but does not compel anticompetitive conduct. *Snake River Valley Elec. Ass'n v. PacifiCorp*, 238 F.3d 1189 (9th Cir. 2001).

Because the electric supplier stabilization act does not provide for active supervision of private agreements to divide customers, the second prong of the two-step test for determining whether an alleged state-sponsored

restraint of competition is immune from federal antitrust scrutiny was not satisfied, and defendant's refusal to allow plaintiff to serve its customers was, therefore, not shielded by the state action immunity doctrine. *Snake River Valley Elec. Ass'n v. PacifiCorp*, 238 F.3d 1189 (9th Cir. 2001).

State action immunity prevented electricity retailer from asserting a successful claim that the electric power company violated federal antitrust law, as the electricity retailer was prohibited under the law from "pirating" the electric power company's customers unless the Idaho public utilities commission granted an exception permitting the transfer of present or past customers; since the power to

control the division of consumers was controlled entirely by the Idaho public utilities commission, the alleged refusal of the electric power company to "wheel", that is, allow the electricity retailer to serve customers using the electric power company's transmission lines, could not be the basis for a federal antitrust action against the electric power company. *Snake River Valley Elec. Ass'n v. PacifiCorp*, 357 F.3d 1042 (9th Cir.), cert. denied, 543 U.S. 956, 125 S. Ct. 416, 160 L. Ed. 2d 317 (2004).

Cited in: *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 112 Idaho 10, 730 P.2d 930 (1986).

61-332C. Provisions for selecting electric supplier for new electric service entrances. — (1) In determining which electric supplier will provide electric service for a new service entrance, the following provisions will govern:

(a) If no electric supplier has an existing service line within one thousand three hundred twenty (1,320) feet of a new service entrance the consumer shall have the right of choice of electric supplier.

(b) If only one (1) electric supplier has an existing service line within one thousand three hundred twenty (1,320) feet of the new service entrance that electric supplier shall have the right to serve the consumer at the new service entrance.

(c) If more than one (1) electric supplier has an existing service line within one thousand three hundred twenty (1,320) feet of the new service entrance the electric supplier whose existing service line is nearest the new service entrance shall have the right to serve the consumer at the new service entrance.

(d) If more than one (1) electric supplier has an existing service line within one thousand three hundred twenty (1,320) feet of the new service entrance and it cannot be determined by proof which service line is nearest the new service entrance, then the consumer or an electric supplier shall petition the commission for an order determining which electric supplier is nearest the new service entrance.

(e) For purposes of this act distances shall mean the exact distance measured using standard land surveying practices as established by the board of [licensure of] professional engineers and [professional] land surveyors of the state of Idaho.

(2) No electric supplier shall construct or extend facilities, nor make any electric connections, nor permit any connection to be made from any of its facilities to any new service entrance nor shall it supply electric service to any new service entrance in violation of the provisions of this section, except as ordered by the commission pursuant to this act.

History.

I.C., § 61-332, as added by 1970, ch. 141,

§ 5, p. 417; am. 2000, 1st Ex. Sess., ch. 1, § 5, p. 3; am. 2001, ch. 29, § 6, p. 35.

STATUTORY NOTES

Prior Laws.

Former § 61-332C, was repealed by section 13 of S.L. 2000, 1st Ex. Sess., ch. 1, effective March 1, 2001.

Legislative Intent.

Section 1 of S.L. 2000, 1st Ex. Sess., § 1 read: "The provision of a safe and reliable supply of electricity in a manner that prohibits the 'pirating' of consumers and discourages duplication of facilities is essential to the well-being of Idaho's citizens and its economy. It was for these and other reasons that the legislature passed the Electric Supplier Stabilization Act in 1970. The legislature has been advised of federal antitrust litigation alleging that conformance with the provisions of this act does not confer federal antitrust immunity upon parties in compliance with the act. The legislature finds that a negative judicial ruling would have the effect of repealing applicable provisions of the act, undercutting the purposes for which this act was enacted. It is and has been the intention of the legislature to confer antitrust immunity upon parties acting in compliance with the act under what is known as the state action doctrine. While the legislature believes that compliance with the existing provisions of

this act confers such immunity, it has determined to amend the act to more fully address this issue. The legislature therefore finds that it is in the public interest to enact the following amendments."

Compiler's Notes.

2000 1st Ex. Sess., ch. 1 made some changes to this section, effective December 8, 2000, and others effective March 1, 2001. However, S.L. 2001, ch. 29 § 1 repealed 2000 1st Ex. Sess., ch. 1 effective February 28, 2001. Consequently, the 2000 1st Ex. Sess., ch. 1 changes that were effective December 8, 2000, were repealed effective February 28, 2001, and the changes that were to take effect March 1, 2001, never took effect.

The bracketed insertions in paragraph (1)(e) were added by the compiler to correct the name of the referenced board. See § 54-1203.

For meaning of the term "this act", see § 61-332.

Effective Dates.

Section 22 of S.L. 2000, 1st Ex. Sess. ch. 1 declared an emergency. Approved December 8, 2000.

Section 16 of S.L. 2001, ch. 29 declared an emergency. Approved February 28, 2001.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Conditions affecting injunctive relief.
Feeder tie.

Conditions Affecting Injunctive Relief.

An injunction against a municipal corporation was properly denied where both plaintiff and defendant had lines within one thousand feet of one prospective customer and both had installations on the property of another. *Rural Elec. Co. v. Burley*, 89 Idaho 112, 403 P.2d 580 (1965).

Feeder Tie.

In an action between two electric suppliers regarding who has the right to supply electricity to new consumers, the supplier with the closest "existing service line" to the consumer's new service entrance is usually entitled to serve the new consumer; however, where evidence shows that a supplier constructed a "feeder tie" in order to obtain an advantage under ISSEA, the feeder tie does

not fall within the definition of "existing service line" pursuant to § 61-332A, regardless of proof that the feeder tie was installed for legitimate reasons. *Kootenai Elec. Coop. v. Washington Water Power Co.*, 127 Idaho 432, 901 P.2d 1333 (1995).

If an electric supplier had legitimate reasons for constructing its feeder tie, but one of its significant purposes was to obtain an advantage over another electric supplier, then the feeder tie does not meet the definition of "existing service line" under § 61-332A and cannot be used as a measuring point for determining which supplier has the right to provide electric service to new consumers. *Kootenai Elec. Coop. v. Washington Water Power Co.*, 127 Idaho 432, 901 P.2d 1333 (1995).

61-332D. Wheeling services. — (1) An electric supplier shall not be

required to provide wheeling service over its system if such service results in retail wheeling and/or a sham wholesale transaction.

(2) An electric supplier declining to furnish wheeling service pursuant to this section shall petition the commission for review of the electric supplier's action in respect to a request for such service. The commission shall, upon notice and opportunity for hearing, review the electric supplier's action for consistency with the purposes and provisions of this act, and issue an order in accordance with its finding, ordering either that the wheeling service shall, or shall not, be required.

History.

I.C., § 61-332D, as added by 2001, ch. 29, § 7, p. 35.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2000, 1st Ex. Sess., § 1 read: "The provision of a safe and reliable supply of electricity in a manner that prohibits the 'pirating' of consumers and discourages duplication of facilities is essential to the well-being of Idaho's citizens and its economy. It was for these and other reasons that the legislature passed the Electric Supplier Stabilization Act in 1970. The legislature has been advised of federal antitrust litigation alleging that conformance with the provisions of this act does not confer federal antitrust immunity upon parties in compliance with the act. The legislature finds that a negative judicial ruling would have the effect of repealing applicable provisions of the act, undercutting the purposes for which this act was enacted. It is and has been the intention of the legislature to confer antitrust immunity upon parties acting in compliance with the act under what is known as the state action doctrine. While the legislature believes that compliance with the existing provisions of

this act confers such immunity, it has determined to amend the act to more fully address this issue. The legislature therefore finds that it is in the public interest to enact the following amendments."

Compiler's Notes.

For the meaning of the term "this act", see § 61-332.

2000 1st Ex. Sess., ch. 1 made some changes to this section, effective December 8, 2000, and others effective March 1, 2001. However, S.L. 2001, ch. 29 § 1 repealed 2000 1st Ex. Sess., ch. 1 effective February 28, 2001. Consequently, the 2000 1st Ex. Sess., ch. 1 changes that were effective December 8, 2000, were repealed effective February 28, 2001, and the changes that were to take effect March 1, 2001, never took effect.

Effective Dates.

Section 22 of S.L. 2000, 1st Ex. Sess., ch. 1 declared an emergency. Approved December 8, 2000.

Section 16 of S.L. 2001, ch. 29 declared an emergency. Approved February 28, 2001.

JUDICIAL DECISIONS

In General.

Electric power company was entitled to refuse to "wheel", where it allowed the electricity retailer to deliver electricity to the electricity retailer's customers through use of the electric power company's transmission facilities under certain circumstances, and its refusal to do so did not violate federal antitrust law because it was the responsibility of the Idaho public utilities commission, not the electric power company, to determine whether

the refusal to wheel violated the law; by the same token, the electricity retailer was prohibited from serving the electric power company's customers or former customers unless it petitioned the Idaho public utilities commission and the Idaho public utilities commission issued an order allowing this service. *Snake River Valley Elec. Ass'n v. PacifiCorp*, 357 F.3d 1042 (9th Cir.), cert. denied, 543 U.S. 956, 125 S. Ct. 416, 160 L. Ed. 2d 317 (2004).

61-333. Authorizing contracts among electric suppliers to resolve territories, consumers and to transfer facilities. — (1) Any electric supplier may contract in writing with any other electric supplier for

the purpose of allocating territories, consumers, and future consumers between the electric suppliers and designating which territories and consumers are to be served by which contracting electric supplier. The territories and consumers so allocated and designated may include all or any portion of the territories and consumers which are being served by any or all of the contracting electric suppliers at the time the contract is entered into, or which could be economically served by the then existing facilities of any contracting electric supplier, or by reasonable and economic extensions thereto. All such contracts shall be filed with the commission. The commission shall, after notice and opportunity for hearing, review and approve or reject contracts between cooperatives, between cooperatives and public utilities and between public utilities. The commission shall, after notice and opportunity for hearing, review and approve or reject contracts between municipalities and cooperatives, as well as between municipalities and public utilities, provided however, the commission shall have jurisdiction only over cooperatives and public utilities in such approvals. The commission shall approve such contracts only upon finding that the allocation of territories or consumers is in conformance with the provisions and purposes of this act.

(2) Any electric supplier may also contract in writing with any other electric supplier for the sale, exchange, transfer, or lease of equipment or facilities located within territory which is the subject of any allocation contracted for under subsection (1) of this section and any contract validly entered into and approved by the commission after notice and opportunity for hearing shall be binding and shall be legally enforceable pursuant to this act, or by any other remedy provided by law.

History.

I.C., § 61-332, as added by 1970, ch. 141,

§ 7, p. 417; am. 2000, 1st Ex. Sess., ch. 1, § 7, p. 3; am. 2001, ch. 29, § 8, p. 35.

STATUTORY NOTES**Prior Laws.**

Former § 61-333, comprising S.L. 1957, ch. 133, § 2, p. 226; am. 1963, ch. 269, § 1, p. 685, was repealed by S.L. 1970, ch. 141, § 6.

Legislative Intent.

Section 1 of S.L. 2000, 1st Ex. Sess., § 1 read: "The provision of a safe and reliable supply of electricity in a manner that prohibits the 'pirating' of consumers and discourages duplication of facilities is essential to the well-being of Idaho's citizens and its economy. It was for these and other reasons that the legislature passed the Electric Supplier Stabilization Act in 1970. The legislature has been advised of federal antitrust litigation alleging that conformance with the provisions of this act does not confer federal antitrust immunity upon parties in compliance with the act. The legislature finds that a negative judicial ruling would have the effect of repealing applicable provisions of the act, undercutting the purposes for which this act was

enacted. It is and has been the intention of the legislature to confer antitrust immunity upon parties acting in compliance with the act under what is known as the state action doctrine. While the legislature believes that compliance with the existing provisions of this act confers such immunity, it has determined to amend the act to more fully address this issue. The legislature therefore finds that it is in the public interest to enact the following amendments."

Compiler's Notes.

2000 1st Ex. Sess., ch. 1 made some changes to this section, effective December 8, 2000, and others effective March 1, 2001. However, S.L. 2001, ch. 29 § 1 repealed 2000 1st Ex. Sess., ch. 1 effective February 28, 2001. Consequently, the 2000 1st Ex. Sess., ch. 1 changes that were effective December 8, 2000, were repealed effective February 28, 2001, and the changes that were to take effect March 1, 2001, never took effect.

For meaning of the term "this act", see § 61-332.

declared an emergency. Approved December 8, 2000.

Effective Dates.

Section 22 of S.L. 2000, 1st Ex. Sess., ch. 1

Section 16 of S.L. 2001, ch. 29 declared an emergency. Approved February 28, 2001.

61-333A. Increased area — Extension of service permitted. — In the event an area hereafter shall be included as a result of incorporation or annexation within the boundaries of a city, town or village, any public utility and any cooperative association organized for the purpose of furnishing electric service to its members or consumers only, furnishing electric service or operating electric facilities in such area prior to such inclusion, shall, unless the municipality acquire such facilities pursuant to section 61-333B, Idaho Code, and subject to the provisions of sections 61-332B and 61-332C, Idaho Code, have the right to continue and extend the furnishing of electric services in such area, and to utilize public streets, alleys and thoroughfares, or such portion of such annexed area as is designated on the recorded plat for the installation of utilities, for such purpose. Such public utility or cooperative association shall comply with all lawful and reasonable safety requirements and the laws of the state of Idaho and nondiscriminatory ordinances of the city, town or village, as to the manner of constructing and maintaining electrical facilities therein.

History.

I.C., § 61-333A, as added by 1963, ch. 269,
§ 2, p. 685; am. 1970, ch. 141, § 8, p. 417.

JUDICIAL DECISIONS

Eminent Domain.

This act was not applicable to an action by a city to condemn under right of eminent domain the property of an electric power

cooperative within newly annexed territory commenced before the effective date of this act. *Unity Light & Power Co. v. City of Burley*, 92 Idaho 499, 445 P.2d 720 (1968).

61-333B. Municipal corporation restricted in serving new area previously served by utility or cooperative association — Voluntary agreements — Election — Appeals. — In the event the annexing municipality has been furnishing electric service to its residents at the time of such annexation, or thereafter commences the furnishing of such service to its residents, nothing in this chapter shall prevent such municipality from extending its service to the annexed or incorporated area, upon the payment of just compensation, as defined in section 7-711, Idaho Code, to such public utility or cooperative serving such area prior to annexation, for any property, real or personal, including damages to the remainder of the system, if any, of such cooperative or public utility, used in distribution, transmission or supply of electrical energy to such area prior to annexation. As used herein, just compensation shall include consideration of new installations necessarily made between the time of annexation or incorporation and final settlement.

Provided, however, in case the annexed area was previously served by a cooperative association, no extension shall be made by the municipal corporation, except upon the following conditions:

1. Until the terms and conditions of such extension, including just compensation therefor, have been finally determined by voluntary agreement between the annexing municipality and the servicing cooperative association, or

2. In the event that such voluntary agreement cannot be made within ninety (90) days of the date of incorporation or annexation of such territory served by such cooperative association, then the municipal corporation may, if so determined by unanimous vote of its governing body, submit to the qualified electors of such municipality upon a special ballot to be voted upon at the next regular election of such municipality, the question "Shall portions of the _____ of _____, Idaho which have heretofore been served electrical energy by _____ become a part of the electrical system of the _____ of _____, Idaho. Said areas are generally known and described as follows: (Insert description)."

A majority of the votes cast on said special ballot must be in favor of the proposition in order to approve the transaction on the part of the municipal corporation. Further, the cooperative association shall submit either by mail or at an annual or special meeting to its members, at the same time of the municipal election above mentioned, the question of whether or not the board of such cooperative association be authorized to sell to the municipality upon payment of just compensation, to be agreed upon, or if agreement be not reached, upon compensation determined as provided hereinafter. A majority of the votes cast must be in favor of the proposition in order to approve the transaction on the part of the cooperative association. At least 15 days before the vote by the members of the cooperative association, the association shall submit to the municipality a list of members eligible to vote and the municipality is hereby authorized to submit to said members a written statement of the reasons for the transfer to electric service by the municipality.

If agreement cannot be reached upon the amount of just compensation, the matter shall be submitted to the district court of the county wherein the municipality is located pursuant to procedures of title 10, chapter 12, Idaho Code, for this purpose of fixing and determining the amount of just compensation as hereinbefore defined.

The court may appoint not more than two (2) experts to advise the court, and the costs of the action, including fees of such experts, shall be taxed equally to the parties.

Either party may appeal from the decision of the court in the same manner that other appeals are taken therefrom. No transfer of facilities shall be made until the amount of compensation has been finally determined and paid.

History.

I.C., § 61-333B, as added by 1963, ch. 269,
§ 3, p. 685.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

Eminent Domain.

This act was not applicable to an action by a city to condemn under right of eminent domain the property of an electric power

cooperative within newly annexed territory commenced before the effective date of this act. *Unity Light & Power Co. v. City of Burley*, 92 Idaho 499, 445 P.2d 720 (1968).

61-333C. Nonmunicipal service organizations prohibited from extending service. — Nothing contained herein shall authorize any cooperative association or public utility having transmission lines presently within corporate limits of any municipal corporation, presently engaged in the sale of electrical energy to its citizens, to make any service connections within corporate limits of such municipal corporation from such transmission lines.

History.

I.C., § 61-333C, as added by 1963, ch. 269, § 4, p. 685.

STATUTORY NOTES

Effective Dates.

Section 5 of S.L. 1963, ch. 269 provided that

the act should take effect from and after June 1, 1963.

JUDICIAL DECISIONS

Eminent Domain.

This act was not applicable to an action by a city to condemn under right of eminent domain the property of an electric power

cooperative within newly annexed territory commenced before the effective date of this act. *Unity Light & Power Co. v. City of Burley*, 92 Idaho 499, 445 P.2d 720 (1968).

61-334. Special rules of interpretation. — Nothing contained in this act shall be construed to:

(1) Grant the commission jurisdiction over cooperatives or municipalities except as authorized in this act.

(2) Apply to controversies between two (2) or more public utilities.

(3) Preclude any electric supplier from extending electric service to its own property or facilities or to another electric supplier for resale, provided any line extension made under this clause shall not be considered in determining the right of electric suppliers to serve new service entrances under section 61-332C, Idaho Code.

(4) Abrogate or limit the authority of any municipality under any other statute or law with respect to the municipality providing electricity to the municipality or the consumers of the municipality within the boundaries of the municipality.

History.

I.C., § 61-332, as added by 1970, ch. 141,

§ 10, p. 417; am. 2000, 1st Ex. Sess., ch. 1, § 8, p. 3; am. 2001, ch. 29, § 9, p. 35.

STATUTORY NOTES**Prior Laws.**

Former § 61-334, comprising S.L. 1957, ch. 133, § 3, p. 226, was repealed by S.L. 1970, ch. 141, § 9.

Legislative Intent.

Section 1 of S.L. 2000, 1st Ex. Sess., § 1 read: "The provision of a safe and reliable supply of electricity in a manner that prohibits the 'pirating' of consumers and discourages duplication of facilities is essential to the well-being of Idaho's citizens and its economy. It was for these and other reasons that the legislature passed the Electric Supplier Stabilization Act in 1970. The legislature has been advised of federal antitrust litigation alleging that conformance with the provisions of this act does not confer federal antitrust immunity upon parties in compliance with the act. The legislature finds that a negative judicial ruling would have the effect of repealing applicable provisions of the act, undercutting the purposes for which this act was enacted. It is and has been the intention of the legislature to confer antitrust immunity upon parties acting in compliance with the act under what is known as the state action

doctrine. While the legislature believes that compliance with the existing provisions of this act confers such immunity, it has determined to amend the act to more fully address this issue. The legislature therefore finds that it is in the public interest to enact the following amendments."

Compiler's Notes.

2000 1st Ex. Sess., ch. 1 made some changes to this section, effective December 8, 2000, and others effective March 1, 2001. However, S.L. 2001, ch. 29 § 1 repealed 2000 1st Ex. Sess., ch. 1 effective February 28, 2001. Consequently, the 2000 1st Ex. Sess., ch. 1 changes that were effective December 8, 2000, were repealed effective February 28, 2001, and the changes that were to take effect March 1, 2001, never took effect.

For meaning of the term "this act", see § 61-332.

Effective Dates.

Section 22 of S.L. 2000, 1st Ex. Sess., ch. 1 declared an emergency. Approved December 8, 2000.

Section 16 of S.L. 2001, ch. 29 declared an emergency. Approved February 28, 2001.

61-334A. Remedies for violation of this act. — (1) Any electric supplier or consumer whose rights under this act shall be violated or threatened with violation may file a complaint with the commission against an electric supplier and any other person responsible for the violation.

(2) After notice and opportunity for hearing, the commission shall make findings of fact and conclusions of law determining whether this act or any orders issued under this act have been violated or threatened to be violated and shall determine whether there is actual or threatened irreparable injury as to the electric supplier or consumer whose rights are violated or threatened with violation as a basis for granting relief.

(3) The relief to be granted under this section for violation of this act shall forbid further acts in violation of such orders, shall order the removal of any electric connections, facilities or equipment that constitute the violation, or a combination thereof necessary to enforce compliance with this act.

History.

I.C., § 61-334B, as added by 1970, ch. 141, § 12, p. 417; am. and redesisg. 2000, 1st Ex.

Sess., ch. 1, § 101, p. 3; am. and redesisg. 2001, ch. 29, § 11, p. 35.

STATUTORY NOTES**Compiler's Notes.**

For meaning of the term "this act", see § 61-332.

2000 1st Ex. Sess., ch. 1 made some changes to this section, effective December 8, 2000, and others effective March 1, 2001.

However, S.L. 2001, ch. 29 § 1 repealed 2000 1st Ex. Sess., ch. 1 effective February 28, 2001. Consequently, the 2000 1st Ex. Sess., ch. 1 changes that were effective December 8, 2000, were repealed effective February 28, 2001, and the changes that were to take effect March 1, 2001, never took effect.

Effective Dates.

Section 22 of S.L. 2000, 1st Ex. Sess., ch. 1 declared an emergency. Approved December 8, 2000.

Section 16 of S.L. 2001, ch. 29 declared an emergency. Approved February 28, 2001.

61-334B. Commission supervision and authority. — (1) Upon a petition by an electric supplier or consumer for an exception to the provisions of section 61-332B or 61-332C(1)(a), (b) or (c), Idaho Code, the commission shall issue an order granting such request only upon finding that granting the request is consistent with the purposes of this act as set forth in section 61-332, Idaho Code.

(2) The commission shall have power to issue authorizations and orders requested under this act, or to refuse to issue the same, and may attach to any authorization and order as a condition of approval such terms and conditions as it determines are consistent with the purposes and provisions of this act.

(3) In all matters arising under this act, which are submitted to the commission for decision, order or review, the procedure shall be governed by chapters 6 and 7, title 61, Idaho Code, and the commission's rules of procedure. Reconsideration of, appeal from, enforcement of, and stay of orders issued pursuant to this act shall be governed by law as for other orders of the commission in other matters.

History.

I.C., § 61-334B, as added by 2001, ch. 29, § 12, p. 35.

STATUTORY NOTES**Legislative Intent.**

Section 1 of S.L. 2000, 1st Ex. Sess., § 1 read: "The provision of a safe and reliable supply of electricity in a manner that prohibits the 'pirating' of consumers and discourages duplication of facilities is essential to the well-being of Idaho's citizens and its economy. It was for these and other reasons that the legislature passed the Electric Supplier Stabilization Act in 1970. The legislature has been advised of federal antitrust litigation alleging that conformance with the provisions of this act does not confer federal antitrust immunity upon parties in compliance with the act. The legislature finds that a negative judicial ruling would have the effect of repealing applicable provisions of the act, undercutting the purposes for which this act was enacted. It is and has been the intention of the legislature to confer antitrust immunity upon parties acting in compliance with the act under what is known as the state action doctrine. While the legislature believes that compliance with the existing provisions of this act confers such immunity, it has deter-

mined to amend the act to more fully address this issue. The legislature therefore finds that it is in the public interest to enact the following amendments."

Compiler's Notes.

2000 1st Ex. Sess., ch. 1 made some changes to this section, effective December 8, 2000, and others effective March 1, 2001. However, S.L. 2001, ch. 29 § 1 repealed 2000 1st Ex. Sess., ch. 1 effective February 28, 2001. Consequently, the 2000 1st Ex. Sess., ch. 1 changes that were effective December 8, 2000, were repealed effective February 28, 2001, and the changes that were to take effect.

For meaning of the term "this act", see § 61-332.

Effective Dates.

Section 22 of S.L. 2000, 1st Ex. Sess., ch. 1 declared an emergency. Approved December 8, 2000.

Section 16 of S.L. 2001, ch. 29 declared an emergency. Approved February 28, 2001.

JUDICIAL DECISIONS

Pirating.

State action immunity prevented electricity retailer from asserting a successful claim that the electric power company violated federal antitrust law, as the electricity retailer was prohibited under the law from “pirating” the electric power company’s customers unless the Idaho public utilities commission granted an exception permitting the transfer of present or past customers; since the power to control the division of consumers was con-

trolled entirely by the Idaho public utilities commission, the alleged refusal of the electric power company to “wheel”, that is, allow the electricity retailer to serve customers using the electric power company’s transmission lines, could not be the basis for a federal antitrust action against the electric power company. *Snake River Valley Elec. Ass’n v. PacifiCorp*, 357 F.3d 1042 (9th Cir.), cert. denied, 543 U.S. 956, 125 S. Ct. 416, 160 L. Ed. 2d 317 (2004).

61-334C. Electric supplier immunity. — No action under the Idaho competition act, chapter 1, title 48, Idaho Code, or any other provision or doctrine of law of the state of Idaho shall lie against an electric supplier for action or inaction that is in compliance with the provisions of this act or any commission order issued pursuant to this act.

History.

I.C., § 61-334C, as added by 2001, ch. 29, § 13, p. 35.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2000, 1st Ex. Sess., § 1 read: “The provision of a safe and reliable supply of electricity in a manner that prohibits the ‘pirating’ of consumers and discourages duplication of facilities is essential to the well-being of Idaho’s citizens and its economy. It was for these and other reasons that the legislature passed the Electric Supplier Stabilization Act in 1970. The legislature has been advised of federal antitrust litigation alleging that conformance with the provisions of this act does not confer federal antitrust immunity upon parties in compliance with the act. The legislature finds that a negative judicial ruling would have the effect of repealing applicable provisions of the act, undercutting the purposes for which this act was enacted. It is and has been the intention of the legislature to confer antitrust immunity upon parties acting in compliance with the act under what is known as the state action doctrine. While the legislature believes that compliance with the existing provisions of this act confers such immunity, it has deter-

mined to amend the act to more fully address this issue. The legislature therefore finds that it is in the public interest to enact the following amendments.”

Compiler’s Notes.

2000 1st Ex. Sess., ch. 1 made some changes to this section, effective December 8, 2000, and others effective March 1, 2001. However, S.L. 2001, ch. 29 § 1 repealed 2000 1st Ex. Sess., ch. 1 effective February 28, 2001. Consequently, the 2000 1st Ex. Sess., ch. 1 changes that were effective December 8, 2000, were repealed effective February 28, 2001, and the changes that were to take effect March 1, 2001, never took effect.

For meaning of the term “this act”, see § 61-332.

Effective Dates.

Section 22 of S.L. 2000, 1st Ex. Sess., ch. 1 declared an emergency. Approved December 8, 2000.

Section 16 of S.L. 2001, ch. 29 declared an emergency. Approved February 28, 2001.

61-335. Approval of carrier agreements. [Repealed.]

STATUTORY NOTES

Compiler’s Notes.

This section, which comprised I.C., § 61-335, as added by 1978, ch. 124, § 1, p. 280,

was repealed by S.L. 1999, ch. 383, § 12, p. 1051, effective July 1, 1999.

61-336. Additional authorities of electrical or natural gas corporations. — The commission may authorize any public utility that is an electrical or natural gas corporation to file and place into effect schedules establishing rates or charges for energy conservation measures, services or payments provided to individual property owners or customers. Application of the schedule shall be subject to agreement between the public utility and the property owner or customer receiving service at the time the conservation measures, services or payments are initially provided. The schedule may include provisions for the payment of the rates or charges over a period of time and for the application of the payment obligation to successive property owners or customers at the premises where the conservation measures or services were installed or performed or with respect to which the conservation payments were made. The public utility shall record a notice of the payment obligation with the county recorder in the county where the property is located. The commission may prescribe by rule other methods by which the public utility shall notify property owners or customers of any such payment obligation.

History.

I.C., § 61-336, as added by 1993, ch. 218,
§ 1, p. 682.

61-337. Fish and wildlife mitigation information. — (1) On and after July 1, 2004, each electric utility with one thousand (1,000) customers or more may provide information in its bills to its customers regarding the percentage of the electric utility's costs of supplying electric energy to its customers which is utilized for fish and wildlife mitigation purposes on the electric utility's system.

(2) On and after July 1, 2004, each cooperative and municipality furnishing electric service, as those terms are defined in section 61-332A, Idaho Code, (excepting a cooperative that serves less than one thousand (1,000) customers and also serves consumers in other states) may provide information on its bills to its customers of the percentage cost of fish and wildlife mitigation included in the cost of electric energy sold to the cooperative or municipality's customers.

(3) Annually, at a time at the discretion of the utility or entity, a statement shall be posted on the utility's or entity's website detailing to whom and the amount spent on fish and wildlife mitigation by the utility or entity for the most recent fiscal year.

History.

I.C., § 61-337, as added by 2004, ch. 161,
§ 1, p. 527.

STATUTORY NOTES

Prior Laws.

Former § 61-337, which comprised I.C., § 61-337, as added by 1994, ch. 61, § 1, p. 120, was repealed by S.L. 1999, ch. 383, § 12, p. 1051, effective July 1, 1999.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

61-338. Customer cost information. [Null and void.]

STATUTORY NOTES

Compiler's Notes.

Section 4 of S.L. 1997, ch. 403 declared an emergency, and provided that the act should

be null, void and of no force and effect on and after January 1, 1999. Became law without governor's signature March 27, 1997.

61-339. Cooperative and municipal corporations furnishing electrical service — Customer cost information. [Null and void.]

STATUTORY NOTES

Compiler's Notes.

Section 4 of S.L. 1997, ch. 403 declared an emergency, and provided that the act should

be null, void and of no force and effect on and after January 1, 1999. Became law without the governor's signature March 27, 1997.

CHAPTER 4

REPORTS BY PUBLIC UTILITIES

SECTION.

- 61-401. Information to be furnished.
- 61-402. Inventory of physical properties.
- 61-403. Blanks — Filling out by utility.
- 61-404. Copies of maps and records to be furnished.

SECTION.

- 61-405. Annual report.
- 61-406. Compliance with commission's orders.

61-401. Information to be furnished. — Every public utility shall furnish to the commission, in such form and such detail as the commission shall prescribe, all tabulations, computations and all other information required by it to carry into effect any of the provisions of this act and shall make answers to the best of their knowledge, to all questions submitted by the commission.

History.

1913, ch. 61, § 26a, p. 247; reen. C.L. 106:76; C.S., § 2443; I.C.A., § 59-401.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

Power to Require Information.

The fact that subpoena power existed in the commission to order information from other sources as to the past activities of a prospec-

tive transferor of a motor carrier permit did not negate their authority to order the production of such evidence from the prospective transferees. *Kent v. Idaho Pub. Utils.*

Comm'n, 93 Idaho 618, 469 P.2d 745 (1970).

Cited in: In re Garrett Transf. & Storage Co., 53 Idaho 200, 23 P.2d 739 (1933).

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Utilities, § 150.

C.J.S. — 73B C.J.S., Public Utilities, § 208 et seq.

61-402. Inventory of physical properties. — Every public utility, except railroad corporations, shall file with the commission an inventory of all its physical properties within the state, designating the exact location of its property within the several counties of the state; such inventory shall show in detail the cost of construction together with the depreciation charges incident thereto since construction, or may show the cost of replacement of such properties, if in the opinion of the commission the original cost and depreciation charges cannot be obtained: provided, that in the event any public utility refuses or neglects to file such inventory, or the inventory so filed is inaccurate, the commission may send its agents upon the ground and make an inventory as desired by the commission. The entire cost of making such inventory by the agents of the commission shall be paid by the public utility from its profit and loss account and shall not be charged to operating expenses, and such payment shall be made to the treasurer of the state, who shall deposit the same to the credit of the fund provided for the engineering department of said commission.

Every public utility shall file the inventory herein required within six (6) months after the approval of this section by the governor unless for just cause shown the commission may extend such time and shall file new, amended or supplemental inventories at such times thereafter as the commission may require.

History.

C.L. 106:76a, as added by 1919, ch. 179, § 1, p. 556; C.S., § 2444; I.C.A., § 59-402.

JUDICIAL DECISIONS

Evidence of Actual Costs.

This section would seem to require that actual costs be produced where evidence thereof is available. Boise Artesian Water Co.

v. Public Utils. Comm'n, 40 Idaho 690, 236 P. 525 (1925) (valuation for rate-making purposes discussed).

61-403. Blanks — Filling out by utility. — Every public utility receiving from the commission any blanks, with directions to fill the same, shall cause the same to be properly filled out so as to answer fully and correctly each question propounded therein; in case it is unable to answer any question, it shall give a good and sufficient reason for such failure.

History.

1913, ch. 61, § 26b, p. 247; reen. C.L. 106:77; C.S., § 2445; I.C.A., § 59-403.

61-404. Copies of maps and records to be furnished. — Whenever required by the commission every public utility shall deliver to the commission copies of any and all maps, profiles, contracts, agreements, franchises, reports, books, accounts, papers and records in its possession or in any way relating to its property or affecting its business containing evidence relating to the merits of or pertinent to the hearing of any issue pending before the commission.

History.

1913, ch. 61, § 26c, p. 247; reen. C.L.
106:78; C.S., § 2446; I.C.A., § 59-404.

STATUTORY NOTES

Cross References.

Railroad corporation, filing map and profile,
§ 62-201.

61-405. Annual report. — Every public utility shall file an annual report with the commission, verified by the oath of an officer thereof. The verification shall be to the best of said official's knowledge, information and belief. The commission shall prescribe the form of such report and the character of the information to be contained therein, and may from time to time make such changes and such additions in regard to the form and contents thereof as it may deem proper, and on or before January first in each year shall furnish a blank form for such annual reports to every public utility. The contents of such reports and the form thereof shall conform, as nearly as may be, in the case of public utility subject to an act of congress, entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, to that required by the interstate commerce commission; and the commission may also require the report to contain such additional information as is reasonably practicable for the public utility to furnish in relation to rates or regulations concerning fares, rates, agreements or contracts affecting the same, so far as such rates or regulations pertain to transportation within this state. In case it is unable to give such information, it shall give a good and sufficient reason for such failure. When the report of such corporation is defective, or believed to be erroneous, the commission shall notify the corporation or person to amend the same within the time prescribed by the commission. The originals of the reports subscribed to and sworn to as prescribed by law, shall be filed on or before the fifteenth day of April in each year and preserved in the office of the commission. The commission may extend the time for making and filing such report for a period not exceeding sixty (60) days.

Provided, that the commission may in its discretion, prescribe an abbreviated or modified form for such annual report, to be used by persons or corporations who operate or control any plant or system for distributing electric current but who do not generate such current, or by persons or corporations who operate on a small scale or serve a small community of persons.

History.

1913, ch. 61, § 27, p. 247; am. 1915, ch. 101, § 1, p. 239; compiled and reen. C.L. 106:80;

C.S., § 2448; I.C.A., § 59-405; am. 1953, ch. 71, § 1, p. 92.

STATUTORY NOTES**Federal References.**

Act of February 4, 1887, referred to in the first paragraph, was repealed by Act Oct. 17, 1978, P.L. 95-473.

Effective Dates.

Section 2 of S.L. 1953, ch. 71 declared an emergency. Approved February 25, 1953.

61-406. Compliance with commission's orders. — Every public utility shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commission in the matters herein specified, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation by all of its officers, agents and employees.

History.

1913, ch. 61, § 28, p. 247; reen. C.L. 106:81; C.S., § 2449; I.C.A., § 59-406.

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Utilities, § 181.

C.J.S. — 73 C.J.S., Public Utilities, § 119 et seq.

CHAPTER 5

POWERS AND DUTIES OF PUBLIC UTILITIES COMMISSION

SECTION.

- 61-501. Investment of authority.
- 61-502. Determination of rates.
- 61-502A. Restriction on rates authorizing return on property not providing utility service.
- 61-502B. Allocation of gain upon sale of water right.
- 61-503. Power to investigate and fix rates and regulations.
- 61-504. Establishment of through route and joint rate.
- 61-505. Joint hearings and investigations — Reciprocity — Contracts with regulatory agencies of neighboring states.
- 61-506. Interstate rates.
- 61-507. Determination of rules and regulations.
- 61-508. Improvements may be ordered — Cost.
- 61-509. Regulation of train and street car service.
- 61-510. Railroad service — Physical connections.

SECTION.

- 61-511. Railroad service — Spurs and switch connections.
- 61-512. Railroad service — Cars of connecting railroad.
- 61-513. Telephone companies — Physical connections.
- 61-514. Joint use of plant and equipment.
- 61-515. Safety regulations.
- 61-515A. Safety and sanitary equipment and conditions.
- 61-516. Priority designation for electric transmission projects.
- 61-517. Accidents — Investigation — Order or recommendation of commission — Report by utility.
- 61-518. Railroad service — Furnishing cars.
- 61-519. Express service — Delivery of telephone messages.
- 61-520. Service of electric, gas, and water corporations — Determination of standards.
- 61-521. Authority to enter premises.
- 61-522. Consumer may have commodity or appliance tested.

SECTION.

- 61-523. Valuation.
- 61-524. System of accounts.
- 61-525. Depreciation account.
- 61-526. Certificate of convenience and necessity.
- 61-527. Certificate of convenience and necessity — Exercise of right or franchise.
- 61-528. Certificate of convenience and necessity — Conditions.
- 61-529. Certificate of convenience and necessity — Electricity exclusively for mines excepted.
- 61-530. Certificate of convenience and necessity — Port districts and industrial development districts.
- 61-531. Plan for curtailment of electric or gas consumption.
- 61-532. Adoption or rejection of plans — Procedure.
- 61-533. Authority to declare emergency.

SECTION.

- 61-534. Curtailment of service by suppliers in accordance with plans.
- 61-535. Order for curtailment of consumption by consumers.
- 61-536. Liability of suppliers.
- 61-537. Contracts of suppliers subject to provisions of law.
- 61-538. Pole attachments — Regulation.
- 61-539. Water rights of an electrical corporation — No commission jurisdiction.
- 61-540. Authorizing negotiation and execution of contracts by the state of Idaho with electrical corporations regarding certain water rights identified in section 61-539, Idaho Code.
- 61-541. Binding ratemaking treatments applicable when costs of a new electric generation facility are included in rates.

61-501. Investment of authority. — The public utilities commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in the state and to do all things necessary to carry out the spirit and intent of the provisions of this act.

History.

1913, ch. 61, § 29, p. 247; reen. C.L. 106:82; C.S., § 2450; I.C.A., § 59-501.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

ANALYSIS

- Authority to compensate consumer intervenors.
- Companies subject to regulation.
- Constitutionality.
- Construction with other sections.
- Declaratory judgment.
- Effect on contracts.
- Extent of control.
- Hearing on protest.
- Jurisdiction.
- Monopolies.
- Suspension of jurisdiction.

Authority to Compensate Consumer Intervenors.

In the absence of any statute specifically authorizing the public utilities commission to

compensate consumer intervenors, the commission does not have the authority under either this section or § 61-601 to adopt intervenor funding rules or to award attorney fees

and costs in connection with proceedings under the Public Utility Regulatory Policies Act, 16 U.S.C.S. § 2601 et seq., since the commission only has that jurisdiction conferred upon it by the legislature and since attorney fees may only be awarded where specifically provided for by statute or contract. *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 744, 639 P.2d 442 (1981).

Companies Subject to Regulation.

Corporation becomes subject to regulation as public utility only when and to extent that business of such corporation becomes devoted to public use. *Humbird Lumber Co. v. Public Utils. Comm'n*, 39 Idaho 505, 228 P. 271 (1924).

Water company to be public utility within jurisdiction of commission must be operating and delivering water to public or some portion thereof for compensation. *Humbird Lumber Co. v. Public Utils. Comm'n*, 39 Idaho 505, 228 P. 271 (1924).

Where railroad holds out to the public that it will operate as a common carrier, and exercises the right of eminent domain, it cannot contend that it is not a common carrier because it has never operated as such. *Codd v. McGoldrick Lumber Co.*, 46 Idaho 256, 267 P. 439 (1928).

Mere exercise of right of eminent domain by logging railroad did not make it a common carrier. *Codd v. McGoldrick Lumber Co.*, 48 Idaho 1, 279 P. 298 (1929).

Constitutionality.

Legislature has power to regulate and supervise public service companies. *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083 (1914).

Power to supervise and regulate rates or charges for services rendered by public utilities is an inherent function of government, existence of which does not depend upon its exercise by the state at any particular time. *Sandpoint Water & Light Co. v. City of Sandpoint*, 31 Idaho 498, 173 P. 972 (1918).

Construction with Other Sections.

This section is implemented by additional statutory provisions which specifically detail the authority of the commission and the activities subject to its regulation; thus courts historically have looked to the more specific provisions contained in §§ 61-502 through 61-537 to find the legislative grant of authority to the commission. *Washington Water Power Co. v. Kootenai Envtl. Alliance*, 99 Idaho 875, 591 P.2d 122 (1979).

Declaratory Judgment.

In a declaratory judgment action brought by the department of energy (DOE), the commission correctly decided that, as between two utilities with valid certificates to deliver

energy at transmission voltage to the national engineering laboratory, the utility that was currently and satisfactorily serving the disputed area could continue to do so. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 112 Idaho 10, 730 P.2d 930 (1986), cert. denied, 484 U.S. 801, 108 S. Ct. 44, 98 L. Ed. 2d 9 (1987).

Effect on Contracts.

The public utilities commission has no jurisdiction to take away a utility's freedom of contract (so long as the contract is not inimical to the public interest) and must consider private contracts when involved in the rate-making process; as such, interpretation of contracts, as a general rule, does not fall within the commission's jurisdiction. *Afton Energy, Inc. v. Idaho Power Co.*, 111 Idaho 925, 729 P.2d 400 (1986).

Extent of Control.

The Idaho public utilities commission (IPUC) has the authority and the jurisdiction to engage in a case-by-case analysis under applicable statutory law for the standards and requirements pursuant to implementation of the Public Utility Regulatory Policies Act: thus, all case decisions issued by the IPUC are potentially applicable to, and may have an impact on, a qualifying facility's project. *Rosebud Enters., Inc. v. Idaho Public Utils. Comm'n*, 128 Idaho 609, 917 P.2d 766 (1996).

Hearing on Protest.

Commission erred in granting application of company for a certificate of public convenience and necessity to transport and distribute natural gas imported from Canada without granting a hearing to protestants after stating that ruling on motion to dismiss by protestants would be deferred for time being. *Application of Trans-Northwest Gas, Inc.*, 72 Idaho 215, 238 P.2d 1141 (1951).

Jurisdiction.

Public utilities commission, in the exercise of its authority to see that rates, both as a whole and for each particular service, are just to the utility and reasonable to the consumer, and nondiscriminatory as between consumers, also may not only fix rates for each class, but may classify. *Idaho Power Co. v. Thompson*, 19 F.2d 547 (D. Idaho 1927) (valuation for rate-making principles discussed and applied).

Reasonableness of published tariff of carrier is in the first instance a subject of action by the interstate commerce commission or the public utilities commission. *Oregon Short Line R.R. v. Teton Coal Co.*, 35 F.2d 919 (9th Cir. 1929).

In a litigation of reasonable rates between a public utility and a patron, the commission

may require the utility to produce records, contracts and papers bearing on the question and may determine the relevancy or competency of all evidence offered. *Federal Mining & Smelting Co. v. Public Utils. Comm'n*, 26 Idaho 391, 143 P. 1173 (1914).

In exercising the powers and discharging the duties conferred upon the commission by the legislature, it may frequently be necessary for it to reach conclusions upon and make decisions of questions which can only be finally and conclusively adjudicated by the courts, as under the constitution it cannot be deemed invested with judicial powers. *Neil v. Public Utils. Comm'n*, 32 Idaho 44, 178 P. 271 (1919).

Although commission cannot exercise judicial powers, it must, in the performance of its duties, exercise judicial functions. *Neil v. Public Utils. Comm'n*, 32 Idaho 44, 178 P. 271 (1919).

In every case, commission must in first instance decide from evidence before it whether utility with which it seeks to deal is public utility, for unless it is such, commission is without any jurisdiction over it, and this determination can be made only by exercise of judicial functions. *Natatorium Co. v. Erb*, 34 Idaho 209, 200 P. 348 (1921).

The commission is an arm of legislative authority and not a court of justice within Idaho Const., Art. I, § 18. *Natatorium Co. v. Erb*, 34 Idaho 209, 200 P. 348 (1921).

An order in nature of restraining order or injunction issuing from such commission is void. *Humbird Lumber Co. v. Public Utils. Comm'n*, 39 Idaho 505, 228 P. 271 (1924).

Public utilities commission had jurisdiction of application of company for a certificate of public convenience and necessity permitting company to transport and distribute natural gas from Canada, even though company might also have to secure a certificate from federal power commission. *Application of Trans-Northwest Gas, Inc.*, 72 Idaho 215, 238 P.2d 1141 (1951).

Commission has primary jurisdiction in controversy where a plaintiff seeks to compel the furnishing of a service and, in instant case, plaintiff was required to exhaust his administrative remedies before seeking judicial relief. *Grever v. Idaho Tel. Co.*, 94 Idaho 900, 499 P.2d 1256 (1972).

Where the dispute between two telephone companies stemmed from a "Traffic Agreement" between them concerning long-distance toll division and there was no finding that such contract was adverse to the public interest, the matter involved construction and enforcement of contract rights and lay in the jurisdiction of the courts rather than that of the public utilities commission. *Lemhi Tel. Co. v. Mountain States Tel. & Tel. Co.*, 98 Idaho 692, 571 P.2d 753 (1977).

While the commission is not without authority to effect contracts, it must specifically find that a contract is adverse to the public interest before involving itself with a contract between two utilities. *Lemhi Tel. Co. v. Mountain States Tel. & Tel. Co.*, 98 Idaho 692, 571 P.2d 753 (1977).

Pursuant to this section and § 67-5202 [now § 67-5250], the public utilities commission may issue rules providing for procedures to be used in assuring compliance with the requirement for full and adequate prefiling of applications. *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 98 Idaho 718, 571 P.2d 1119 (1977).

The public utilities commission had jurisdiction to decide the issues in a petition for a declaratory ruling brought by the department of energy (DOE), as signatory to a three-party agreement with the Idaho Power Company (IPC) and the Utah Power and Light Co. (U. P. & L.) for the furnishing of energy to the national engineering laboratory (INEL), whereby the DOE sought a ruling that upon the exercise of its right to terminate the agreement, IPC would have the right to be the sole supplier of electricity to INEL. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 112 Idaho 10, 730 P.2d 930 (1986), cert. denied, 484 U.S. 801, 108 S. Ct. 44, 98 L. Ed. 2d 9 (1987).

Under Idaho Const., Art. V, § 9, the Idaho supreme court has only limited jurisdiction to review decisions of the public utilities commission; on questions of law, the review on appeal shall not be extended further than to determine whether the commission has regularly pursued its authority. *A.W. Brown Co. v. Idaho Power Co.*, 121 Idaho 812, 828 P.2d 841 (1992).

By attempting to exercise jurisdiction over third parties, and to allocate costs for relocation of electricity transmission facilities to those third parties that had not requested that service, the Idaho public utilities commission exceeded its authority. *Ada County Highway Dist. v. Idaho Pub. Utils.*, 151 Idaho 1, 253 P.3d 675 (2011).

The Idaho public utilities commission has no authority other than that given to it by the legislature. It exercises a limited jurisdiction and nothing is presumed in favor of its jurisdiction. *Ada County Highway Dist. v. Idaho Pub. Utils.*, 151 Idaho 1, 253 P.3d 675 (2011).

Monopolies.

Constitutional prohibition of monopolies did not have in view a public utility corporation governed and controlled by law for the best interests of the people. *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083 (1914).

Suspension of Jurisdiction.

In absence of constitutional limitations, right of state to regulate rates may be sus-

pending for a limited time by valid contract authorized by legislature, but, when such contract is relied upon, it must appear that authority was clearly and unmistakably granted, and that its delegation is free from doubt. *Sandpoint Water & Light Co. v. City of Sandpoint*, 31 Idaho 498, 173 P. 972 (1918).

Cited in: *In re Garrett Transf. & Storage Co.*, 53 Idaho 200, 23 P.2d 739 (1933); *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 99

Idaho 374, 582 P.2d 720 (1978); *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 282, 629 P.2d 678 (1981); *Afton Energy, Inc. v. Idaho Power Co.*, 107 Idaho 781, 693 P.2d 427 (1984); *Idaho Fair Share v. Idaho Pub. Utils. Comm'n*, 113 Idaho 959, 751 P.2d 107 (1988); *Empire Lumber Co. v. Washington Water Power Co.*, 114 Idaho 191, 755 P.2d 1229 (1988); *Industrial Customers of Idaho Power v. Idaho Pub. Utils. Comm'n*, 134 Idaho 285, 1 P.3d 786 (2000).

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Utilities, § 150 et seq.

C.J.S. — 73B C.J.S., Public Utilities, § 14 et seq.

61-502. Determination of rates. — Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, including the rates or fares for excursions or commutation tickets, or that the rules, regulations, practices, or contracts or any of them, affecting such rates, fares, tolls, rentals, charges or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in any wise in violation of any provision of law, or that such rates, fares, tolls, rentals, charges or classifications are insufficient, the commission shall determine the just, reasonable or sufficient rates, fares, tolls, rentals, charges, classifications, rules, regulations, practices or contracts to be thereafter observed and in force and shall fix the same by order as hereinafter provided, and shall, under such rules and regulations as the commission may prescribe, fix the reasonable maximum rates to be charged for water by any public utility coming within the provisions of this act relating to the sale of water.

History.

1913, ch. 61, § 30(a), p. 247; reen. C.L. 106:83; C.S., § 2451; I.C.A., § 59-502.

STATUTORY NOTES

Cross References.

Air carriers, power of commission to fix rates, § 61-1116.

Effective date of new rate, § 61-623.

Valuation, determination of for purpose of rate making, § 61-523.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch.

61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

ANALYSIS

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Abbreviated Proceedings.

An accelerated rate of recovery of company's demand side management program expenditures, programs designed to help reduce energy consumption, would not increase the company's authorized rate of return; therefore, the public utilities commission was pursuing its statutory authority when it adopted abbreviated proceedings to account for this single item expense of the company. *Industrial Customers of Idaho Power v. Idaho Pub. Utils. Comm'n*, 134 Idaho 285, 1 P.3d 786 (2000).

Amortization Period.

When faced with competent testimony on the reasonableness of five, seven, and twenty-four year amortization periods, the public utilities commission could, relying upon the testimony presented in addition to its own expertise, reasonably determine that a twelve-year amortization period was adequate and reasonable. *Industrial Customers of Idaho Power v. Idaho Pub. Utils. Comm'n*, 134 Idaho 285, 1 P.3d 786 (2000).

Appellate Review.

The supreme court's review of whether the evidence presented to the public utilities commission is competent and substantial must be tempered by a consideration of whether a proposed new rate structure is also just and reasonable as required by §§ 61-301, 61-315 and this section. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981).

Classification.

Public utility commission, in the exercise of its authority to see that rates, both as a whole and for each particular service, are just to the utility and reasonable to the consumer, and nondiscriminatory as between consumers, may not only fix rates for each class, but may also classify. *Idaho Power Co. v. Thompson*, 19 F.2d 547 (D. Idaho 1927).

Mere difference in rates charged various classes of users is not enough to establish

unjustifiable discrimination. *Kiefer v. City of Idaho Falls*, 49 Idaho 458, 289 P. 81 (1930).

An order of the public utility commission imposing a nonrecurring charge of \$50.00 per kilowatt on the installation of or conversion to electric space heating after a fixed date exceeded the commission's authority to fix and regulate rates, since it discriminatorily differentiated between classes of new and old customers without reference to the pattern, nature, and time of usage, quantity, cost of service, or difference in condition of service as between the two classes. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984).

Conditions Affecting Rates.

Where a facility of an electric power company was being used to generate power primarily sold at wholesale to companies outside the state, but was installed primarily not to serve customers outside the state, but to serve the present and future demands of the Idaho customers, it was proper to include such facility in the rate base. *Idaho Underground Water Users Ass'n. v. Idaho Power Co.*, 89 Idaho 147, 404 P.2d 859 (1965).

In order to prevent subsidizing interstate sales for resale by Idaho retail customers, the commission was correct in discounting this portion of the utility's operations in determining intrastate rates assuming that these sales had not previously been discounted in the power company's original rate increase application. *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 99 Idaho 374, 582 P.2d 720 (1978).

Where cost of servicing all water customers increased due to several factors including passage of a federal act, court held no particular group of customers should bear the burden of additional expense occasioned by changes in federal law that imposed new water quality standards; as such, it was unlawfully discriminatory to charge new customers hook-up fees based on an allocation of the incremental cost of new plant construction required by growth and passage of the federal act, while not assessing any charges to

existing customers. *Building Contractors Ass'n v. Idaho Public Utils. Comm'n*, 128 Idaho 534, 916 P.2d 1259 (1996).

Criteria for Rate Differentiation.

Absent a legislative pronouncement to the contrary, it is within the public utilities commission's jurisdictional province to consider in its rate making capacity all relevant criteria, including energy conservation and concomitant concepts of optimum use and resource allocation. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981).

As between classes of service, whether those classes be as between schedules or as between customers within a schedule, valid considerations for rate differentiation are the quantity of the utility used, the nature of the use, the time of use, the pattern of use, the differences in the conditions of service, the costs of service, the reasonable efficiency and economy of operation, the actual differences in the situation of the consumers for the furnishing of the service, contribution to peak load, costs of service on peak demand days, costs of storage and economic incentives; one criterion is not necessarily more essential than another nor is the list of criteria exclusive. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981).

A reasonable classification of utility customers may justify the setting of different rates and charges for the different classes of customers; any such difference in a utility's rates and charges must be justified by a corresponding classification of customers that is based upon factors such as cost of service, quantity of electricity used, differences in conditions of service, or the time, nature and pattern of the use. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984).

Delegation of Power.

Authority to determine what is a reasonable rate is purely administrative and can be delegated and was delegated to the commission in the public utilities act. *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083 (1914).

Failure to Post Stay Bond.

When any party, be it utility, ratepayer or the state of Idaho, appeals a rate setting order of the public utilities commission to the supreme court, but does not stay the effectiveness of the order by posting bond under the terms of the public utility law, then the rates and charges set forth by the order are final in all respects as service is provided and consumed so long as the order continues in effect. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 685 P.2d 276 (1984).

Jurisdiction.

The public utilities commission cannot abrogate the terms of a contract in order to create uniform rates unless it first examines all relevant factors of service to comparable customers and expressly finds that a continuation of the rate specified in the contract would be adverse to the public interest. *Bunker Hill Co. v. Washington Water Power Co.*, 98 Idaho 249, 561 P.2d 391 (1977).

No provision in this act gives the commission authority to unilaterally abrogate existing contractual agreements without making the findings required by this section, but, to the contrary, the act recognizes the continued viability of contracts by requiring them to be filed with the commission. *United States v. Utah Power & Light Co.*, 98 Idaho 665, 570 P.2d 1353 (1977).

Once the findings required by this section are made, the commission has authority to determine the rate at which a public utility provides services to a consumer, regardless of whether the utility is specifically designated as the seller in the relevant contractual agreement. *United States v. Utah Power & Light Co.*, 98 Idaho 665, 570 P.2d 1353 (1977).

By attempting to exercise jurisdiction over third parties, and to allocate costs for relocation of electricity transmission facilities to those third parties that had not requested that service, the Idaho public utilities commission exceeded its authority. *Ada County Highway Dist. v. Idaho Pub. Utils.*, 151 Idaho 1, 253 P.3d 675 (2011).

Political Statements.

Since the legislature intended to limit the commission's authority to those practices which affect the rates, fares, tolls, rentals, charges or classifications of the public utility, the ratemaking authority of the commission does not extend to the area of regulating political statements in the absence of a finding that such action by the utilities increases expenses to be borne by the ratepayers. *Washington Water Power Co. v. Kootenai Envtl. Alliance*, 99 Idaho 875, 591 P.2d 122 (1979).

Practices.

"Practices" as the term is used here are those "practices" which do or may affect the rates charged or the services sought or rendered which are within the commission's ratemaking functions. *Washington Water Power Co. v. Kootenai Envtl. Alliance*, 99 Idaho 875, 591 P.2d 122 (1979).

Prospective Relief.

This section provides only prospective relief. It does not give the public utilities commission authority to prescribe surcharges or reductions to otherwise reasonable rates in order to make up past revenue shortfalls due to confiscatory rates. *Utah Power & Light Co.*

v. Idaho Pub. Utils. Comm'n, 107 Idaho 47, 685 P.2d 276 (1984).

If a rate setting order of the public utilities commission is later set aside by the supreme court, no rates and charges previously collected may be adjusted as a result; similarly, no rates and charges later established by the commission may be adjusted from what they otherwise would have been to take into account what the appealed order would have been before it was set aside had it, during the time it was in effect, conformed to or been altered or amended to meet the objections of the opinion of the supreme court. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 685 P.2d 276 (1984).

Railroad Rates.

State cannot require railroad to haul freight within state at a loss, even though railroad receives adequate revenues from interstate and intrastate hauls taken together. *Chicago, M. & St. P. Ry. v. Public Utils. Comm'n*, 274 U.S. 344, 47 S. Ct. 604, 71 L. Ed. 1085 (1927).

Rate Making in General.

Rate making principles applied to electric rates. *Idaho Power Co. v. Thompson*, 19 F.2d 547 (D. Idaho 1927).

State has the right to regulate rates charged by public service corporations. *Hatch v. Consumers' Co.*, 17 Idaho 204, 104 P. 670 (1909), *aff'd*, 224 U.S. 148, 32 S. Ct. 465, 56 L. Ed. 703 (1912).

Valuation for rate making purposes should be based on all evidence bearing on cost and value as of date of inquiry. *Boise Artesian Water Co. v. Public Utils. Comm'n*, 40 Idaho 690, 236 P. 525 (1925).

Rate making for municipally-owned public utility. *Kiefer v. City of Idaho Falls*, 49 Idaho 458, 289 P. 81 (1930).

Order issued by commission granting increase in electric service rates based upon adjusted test year was not unjust or unreasonable, where it was shown by the applicant utility that use of historical data would have inadequately demonstrated real revenue needs and where the future-year projections were shown to be reasonably reliable and certain. *Agricultural Prods. Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 557 P.2d 617 (1976).

The commission had authority to fix utility rates which would supersede rates previously fixed by private contract, but before the commission could increase electric service rates charged to an industrial customer under a special service contract it was required to find specifically that the different rate was unreasonable and adverse to the public interest. *Agricultural Prods. Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 557 P.2d 617 (1976).

Although no statute gives explicit authority to the commission to enter interim orders, implied in the mandate that the commission continue to evaluate the rates charged and make changes as necessary is the power to make orders effecting rates that are temporary in nature. *Grindstone Butte Mut. Canal Co. v. Idaho Power Co.*, 98 Idaho 860, 574 P.2d 902 (1978).

The commission could determine a fair rate of return from Idaho intrastate customers by first determining an Idaho intrastate rate base representing Idaho operations producing power to be sold in intrastate commerce and then determining a fair rate of return thereon, or it could determine a fair rate of return from all Idaho operations and then deduct the portion of deficiency reflecting Idaho operations producing power for interstate sales for resale, so long as the commission does not exceed its jurisdiction and provided that the end result of the methods used by the commission to compute a utility's rate of return produce a "fair, reasonable or sufficient" result. *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 99 Idaho 374, 582 P.2d 720 (1978).

The determination of what business expenses are to be incurred by a public utility in its operations is ordinarily a matter left within the discretion of the utility's management, and an inquiry into such expenses by the commission will normally only be extended into whether such expenditures may be classified as "operating expenses" and thus passed on to the utility ratepayers. *Washington Water Power Co. v. Kootenai Envtl. Alliance*, 99 Idaho 875, 591 P.2d 122 (1979).

Where the public utilities commission revised rates without hearing evidence on the cost of service analysis, the rates were not unjust and unreasonable under §§ 61-301, 61-315 and this section, since although cost of service is an important criterion which in certain cases may be largely dispositive, it is not per se essential element without which rate making is invalid. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981).

Since the commission has power to regulate and fix charges and rates, but a utility is enjoined from establishing rates or charges which are preferential or discriminatory, it follows by implication that the commission's authority may only be exercised in such a way as to fix nondiscriminatory, and nonpreferential rates and charges. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984).

Recovery of Past Losses.

The Idaho public utilities commission (PUC) does not have the authority to grant a public utility a surcharge to recover past

losses caused by an invalid PUC order set aside by the supreme court on appeal. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 685 P.2d 276 (1984).

Rule of Reasonableness.

"Reasonable" or "just" return, in its judicial sense, is the equivalent of nonconfiscatory. *Idaho Power Co. v. Thompson*, 19 F.2d 547 (D. Idaho 1927).

Prima facie, a published tariff of a carrier is reasonable. *Oregon S.L.R.R. v. Teton Coal Co.*, 35 F.2d 919 (9th Cir. 1929).

Delegation of power to commission to fix rates and determine service is limited by standard of reasonableness. *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083 (1914).

Before lowering rate, the commission must find it unjust or unreasonable; before raising, insufficient. *Murray v. Public Utils. Comm'n*, 27 Idaho 603, 150 P. 47 (1915).

Where a rate increase granted to a power company affected an existing contract, the commission must make a specific finding that the contractual rate was "unjust, unreasonable, discriminatory, preferential or in anywise in violation of any provision of law" before such increase became effective, and, in the absence of such finding, the court would set aside the commission's order as it applied to the contract. *United States v. Utah Power & Light Co.*, 98 Idaho 665, 570 P.2d 1353 (1977).

Where public utilities commission failed to make certain adjustments to 1976 test year

data for "known and measurable changes" such as additions to a plant and acquisition of mining properties, and eliminated a one percent adjustment for regulatory lag in calculating return to common equity, without sufficient evidence, although it had allowed such a lag as being within the zone of "reasonableness" the prior year, the order of the commission was set aside. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 112 Idaho 10, 730 P.2d 930 (1986), cert. denied, 484 U.S. 801, 108 S. Ct. 44, 98 L. Ed. 2d 9 (1987).

Successive Modifications.

The requirements of this section apply to each successive modification of an existing contract. *United States v. Utah Power & Light Co.*, 98 Idaho 665, 570 P.2d 1353 (1977).

Cited in: *State v. Kouni*, 58 Idaho 493, 76 P.2d 917 (1938); *Idaho Mut. Benefit Ass'n v. Robison*, 65 Idaho 793, 154 P.2d 156 (1944); *In re Pacific Tel. & Tel. Co.*, 71 Idaho 476, 233 P.2d 1024 (1951); *Citizens Utils. Co. v. Idaho Pub. Utils. Comm'n*, 99 Idaho 164, 579 P.2d 110 (1978); *FMC Corp. v. Idaho Pub. Utils. Comm'n*, 104 Idaho 265, 658 P.2d 936 (1983); *Afton Energy, Inc. v. Idaho Power Co.*, 107 Idaho 781, 693 P.2d 427 (1984); *General Tel. Co. v. Idaho Pub. Utils. Comm'n*, 109 Idaho 942, 712 P.2d 643 (1986); *Empire Lumber Co. v. Washington Water Power Co.*, 114 Idaho 191, 755 P.2d 1229 (1988); *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

61-502A. Restriction on rates authorizing return on property not providing utility service. — Except upon its explicit finding that the public interest will be served thereby, the commission is hereby prohibited in any order issued after the effective date of this act, from setting rates for any utility that grants a return on construction work in progress or property held for future use and which is not currently used and useful in providing utility service. Except as authorized by this section, any rates granting a return on construction work in progress or property held for future use are hereby declared to be unjust, unreasonable, unfair, unlawful and illegal. When construction work in progress is excluded from the rate base, the commission must allow a just, fair and reasonable allowance for funds used during construction or similar account to be accumulated, computed in accordance with generally accepted accounting principles. If the commission sets rates for any utility including a return on property held for future use and subsequently determines that such property is not needed to provide utility service, then the commission shall determine whether any gain or loss occurring from the sale or other disposition of the property may be included in the utility's rates.

History.

I.C., § 61-502A, as added by 1984, ch. 21, § 1, p. 24; am. 2006, ch. 107, § 1, p. 300.

STATUTORY NOTES**Amendments.**

The 2006 amendment, by ch. 107, rewrote the text of the section, which formerly read: "Except upon its finding of an extreme emergency, the commission is hereby prohibited in any order issued after the effective date of this act from setting rates for any utility that grants a return on construction work in progress (except short-term construction work in progress) or property held for future use and which is not currently used and useful in providing utility service. As used in this section, short-term construction work in progress means construction work that has begun and will be completed in not more than twelve (12) months. Except as authorized by this section, any rates granting a return on construction work in progress (except short-term construction work in progress) or property held for future use are hereby declared to be unjust, unreasonable, unfair, unlawful and illegal. When construction work in progress is excluded from the rate base, the commission must allow a just, fair and reasonable allowance for funds used during construction or similar account to be accumulated, computed in accordance with generally accepted accounting principles."

Legislative Intent.

Section 2 of S.L. 1984, ch. 21 read: "It is

hereby declared to be legislative intent that this act should overrule that portion of the decision of the Supreme Court of Idaho entitled *Utah Power & Light Company v. Idaho Public Utilities Commission* [105 Idaho 822, 673 P.2d 422], issued December 14, 1983, which authorized or required construction work in progress or property held for future use to be included in a utility's rate base or otherwise authorized or required the commission to grant a return on such property, and that the commission be prohibited from following the precedent of that case in any order issued after the effective date of this act to the extent that such precedent authorizes construction work in progress or property held for future use which is not currently used and useful in providing utility service to be included in rate base or authorize or require the commission to allow a return on such property."

Compiler's Notes.

The phrase "the effective date of this act" in the first sentence refers to the effective date of S.L. 1984, ch. 21, which was effective February 29, 1984.

Effective Dates.

Section 3 of S.L. 1984, ch. 21 declared an emergency. Approved February 29, 1984.

61-502B. Allocation of gain upon sale of water right. — The gain upon sale of a public utility's water right used for the generation of electricity shall accrue to the benefit of the ratepayers.

History.

I.C., § 61-502B, as added by 1985, ch. 16, § 1, p. 22.

61-503. Power to investigate and fix rates and regulations. — The commission shall have power, upon a hearing, had upon its own motion or upon complaint, to investigate a single rate, fare, toll, rental, charge, classification, rule, regulation, contract or practice, or any number thereof, or the entire schedule or schedules of rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts or practices, or any thereof, of any public utility, and to establish new rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts or practices or schedule or schedules in lieu thereof.

History.

1913, ch. 61, § 30(b), p. 247; reen. C.L. 106:84; C.S., § 2452; I.C.A., § 59-503.

JUDICIAL DECISIONS

ANALYSIS

Constitutional limitation.
Criteria considered.
Extent of inquiry.
Investigative authority.
Jurisdiction.
Jurisdiction of commission.
Political statements.
Practices.
Reasonable classifications.
Special service contracts.

Constitutional Limitation.

The provisions of Idaho Const., Art. I, § 16 protecting the obligations of private contracts limits the right of the state to interfere with utility contracts. *Bunker Hill Co. v. Washington Water Power Co.*, 98 Idaho 249, 561 P.2d 391 (1977).

Criteria Considered.

Absent a legislative pronouncement to the contrary, it is within the public utilities commission's jurisdictional province to consider in its rate making capacity all relevant criteria, including energy conservation and concomitant concepts of optimum use and resource allocation, since the commission operates in the public interest under §§ 61-301 and 61-302 to insure that every public utility operates to promote the safety, health and comfort of the public and to be in all respects adequate, efficient, just and reasonable and under § 61-502 and this section to investigate and determine whether a rate is unjust, unreasonable, discriminatory or preferential. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981).

A reasonable classification of utility customers may justify the setting of different rates and charges for the different classes of customers; any such difference in a utility's rates and charges must be justified by a corresponding classification of customers that is based upon factors such as cost of service, quantity of electricity used, differences in conditions of service, or the time, nature and pattern of the use. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984).

It was unjust and unreasonable for the public utilities commission to direct water company to employ an accountant and then to refuse to consider the expense of doing so in determining water company's rates. *Hayden Pines Water Co. v. Idaho Public Utils. Comm'n*, 122 Idaho 356, 834 P.2d 873 (1992).

The Idaho public utilities commission (IPUC) has the authority and the jurisdiction to engage in a case-by-case analysis under

applicable statutory law for the standards and requirements pursuant to implementation of the public utility regulatory policies act: thus, all case decisions issued by the IPUC are potentially applicable to, and may have an impact on, a qualifying facility's project. *Rosebud Enters., Inc. v. Idaho Public Utils. Comm'n*, 128 Idaho 609, 917 P.2d 766 (1996).

Extent of Inquiry.

The determination of what business expenses are to be incurred by a public utility in its operations is ordinarily a matter left within the discretion of the utility's management, and an inquiry into such expenses by the commission will normally only be extended into whether such expenditures may be classified as "operating expenses" and, thus, passed on to the utility ratepayers. *Washington Water Power Co. v. Kootenai Envtl. Alliance*, 99 Idaho 875, 591 P.2d 122 (1979).

Investigative Authority.

The public utilities commission would have authority under this section to conduct an investigation and to make changes based on its investigation. *Hayden Pines Water Co. v. Idaho Public Utils. Comm'n*, 122 Idaho 356, 834 P.2d 873 (1992).

Jurisdiction.

By attempting to exercise jurisdiction over third parties and to allocate costs for relocation of electricity transmission facilities to those third parties that had not requested that service, the Idaho public utilities commission exceeded its authority. *Ada County Highway Dist. v. Idaho Pub. Utils.*, 151 Idaho 1, 253 P.3d 675 (2011).

Jurisdiction of Commission.

Public utilities commission, in the exercise of its authority to see that rates, both as a whole and for each particular service are just to the utility and reasonable to the consumer, and nondiscriminatory as between consumers, may not only fix rates for each class, but may also classify. *Idaho Power Co. v. Thomp-*

son, 19 F.2d 547 (D. Idaho 1927) (various rate-making principles discussed and applied).

Commission has power to fix rates absolutely and, where these exist, competing companies can charge neither more nor less than the rates fixed. *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083 (1914).

It is contemplated that, on hearings concerning the rates of a public utility, findings will be made by the commission. *Idaho Underground Water Users Ass'n. v. Idaho Power Co.*, 89 Idaho 147, 404 P.2d 859 (1965).

Since the commission has power to regulate and fix charges and rates, but a utility is enjoined from establishing rates or charges which are preferential or discriminatory, it follows by implication that the commission's authority may only be exercised in such a way as to fix nondiscriminatory, and nonpreferential rates and charges. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984).

Political Statements.

Since the legislature intended to limit the commission's authority to those practices which affect the rates, fares, tolls, rentals, charges or classifications of the public utility, the ratemaking authority of the commission does not extend to the area of regulating political statements in the absence of a finding that such action by the utilities increases expenses to be borne by the ratepayers. *Washington Water Power Co. v. Kootenai Envtl. Alliance*, 99 Idaho 875, 591 P.2d 122 (1979).

Practices.

"Practices" as the term is used here are those "practices" which do or may affect the rates charged or the services sought or rendered which are within the commission's ratemaking functions. *Washington Water Power Co. v. Kootenai Envtl. Alliance*, 99 Idaho 875, 591 P.2d 122 (1979).

Reasonable Classifications.

An order of the public utility commission imposing a nonrecurring charge of \$50.00 per kilowatt on the installation of or conversion to electric space heating after a fixed date ex-

ceeded the commission's authority to fix and regulate rates, since it discriminatorily differentiated between classes of new and old customers without reference to the pattern, nature, and time of usage, quantity, cost of service, or difference in condition of service as between the two classes. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984).

Where cost of servicing all water customers increased due to several factors including passage of a federal act, court held no particular group of customers should bear the burden of additional expense occasioned by changes in federal law that imposed new water quality standards, as such, it was unlawful discriminatory to charge new customers hook-up fees based on an allocation of the incremental cost of new plant construction required by growth and passage of the federal act, while not assessing any charges to existing customers. *Building Contractors Ass'n v. Idaho Public Utils. Comm'n*, 128 Idaho 534, 916 P.2d 1259 (1996).

Special Service Contracts.

The commission had authority to fix utility rates which would supersede rates previously fixed by private contract, but, before the commission could increase electric service rates charged to an industrial customer under a special service contract, it was required to find specifically that the different rate was unreasonable and adverse to the public interest. *Agricultural Prods. Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 557 P.2d 617 (1976).

Cited in: *In re Pacific Tel. & Tel. Co.*, 71 Idaho 476, 233 P.2d 1024 (1951); *United States v. Utah Power & Light Co.*, 98 Idaho 665, 570 P.2d 1353 (1977); *FMC Corp. v. Idaho Pub. Utils. Comm'n*, 104 Idaho 265, 658 P.2d 936 (1983); *Afton Energy, Inc. v. Idaho Power Co.*, 107 Idaho 781, 693 P.2d 427 (1984); *Empire Lumber Co. v. Washington Water Power Co.*, 114 Idaho 191, 755 P.2d 1229 (1988); *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990); *Industrial Customers of Idaho Power v. Idaho Pub. Utils. Comm'n*, 134 Idaho 285, 1 P.3d 786 (2000).

61-504. Establishment of through route and joint rate. — Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares or charges in force over two (2) or more common carriers, between any two (2) points in this state, are unjust, unreasonable or excessive, or that no satisfactory through route or joint rate, fare or charge exists between such points, and that the public convenience and necessity demand the establishment of a through route and joint rate, fare or charge between such points, the commission may order such common carriers to establish such through route and may establish and fix a joint rate, fare or charge which will be fair, just and reasonable and

sufficient to be followed, charged, enforced, demanded and collected in the future and the terms and conditions under which such through route shall be operated. In case the common carriers do not agree upon the division between them of the joint rates, fares or charges established by the commission over such through routes, the commission shall, after hearing, by supplemental order, establish such division. The commission shall have the power to establish and fix through routes and joint rates, fares or charges over stage or auto lines and to fix the division of such joint rates, fares or charges.

History.

1913, ch. 61, § 31, p. 247; reen. C.L. 106:85;
C.S., § 2453; I.C.A., § 59-504.

61-505. Joint hearings and investigations — Reciprocity — Contracts with regulatory agencies of neighboring states. — (1) The commission shall have full power and authority to make joint investigations, hold joint hearings within or without the state of Idaho with any official, board, commission, or agency of any state or of the United States, whether in the holding of the investigations or hearings the commission shall function under agreements or compacts between states or under the concurrent power of states to regulate the interstate commerce, or as an agency of the federal government, or otherwise.

(2) The commission shall have full power and authority to contract with the regulatory agencies of neighboring states to hold hearings and set rates and charges for customers in Idaho located in or nearby border communities served by utilities principally located in states other than Idaho. These contracts may have a term that extends beyond the terms of the current commissioners.

(3) The commission shall have this authority under subsection (2) of this section only if it finds that:

- (a) The affected Idaho residents live in or nearby a border community that is or may be served by a utility principally located in a state other than Idaho;
- (b) The provision of utility service to such a community by a utility located principally in a state other than Idaho is in the public interest;
- (c) It is impractical or not in the public interest to conduct proceedings for these affected Idaho residents separate from proceedings conducted by the regulatory agency of the neighboring state for rate payers of that utility located in that state;
- (d) The affected Idaho residents have full rights of participation in the hearings conducted by the regulatory agency with which the commission has contracted, as well as the same rights that customers in the neighboring state have to pursue service-related issues; and
- (e) The rates, charges and service regulations for Idaho customers are not less favorable than those of similarly situated customers in the neighboring state.

(4) When the commission has entered into a contract authorized in subsection (2) of this section, the findings, decisions and orders of the

regulatory agency of the neighboring state are presumptively correct and will take effect according to the terms of the order of the regulatory agency of the neighboring state. Affected Idaho customers may petition the commission for a review of the contract or the rates set under the contract upon a showing that:

- (a) All remedies with the neighboring state's utility have been exhausted;
- (b) All remedies with the neighboring state's regulatory agency with which the commission has signed a contract have been exhausted; and
- (c) Idaho customers have been discriminatorily, preferentially or otherwise unlawfully treated by the regulatory agency of the neighboring state.

The commission, upon its preliminary finding that rates set by the regulatory agency of the neighboring state are prima facie discriminatory, preferential or otherwise unlawful, and that all remedies with the neighboring state's utility and commission have been exhausted, may initiate proceedings to review the decision of the regulatory agency of the neighboring state. Any subsequent order of the commission altering the decision of the regulatory agency of the neighboring state will be of prospective effect only.

(5) The contract authorized in subsection (2) of this section, may be revoked if the commission finds that the affected Idaho residents have been unreasonably, discriminatorily, preferentially or otherwise unlawfully treated by the neighboring state's regulatory agency.

History.

C.S., § 2453-A, as added by 1929, ch. 29, § 1, p. 31; I.C.A., § 59-505; rep. and reen.

1969, ch. 229, § 1, p. 737; am. 1982, ch. 258, § 1, p. 669; am. 1990, ch. 79, § 1, p. 161.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1929, ch. 29 declared an emergency. Approved February 18, 1929.

Section 2 of S.L. 1969, ch. 229 declared an emergency. Approved March 25, 1969.

61-506. Interstate rates. — The commission shall have the power to investigate all existing or proposed interstate rates, fares, tolls, charges and classifications, and all rules and regulations and practices in relation thereto, for or in relation to the transportation of persons or property or the transmission of messages or conversations, where any act in relation thereto shall take place within this state; and when the same are, in the opinion of the commission, excessive or discriminatory or in violation of the act of congress entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, or of any other act of congress, or in conflict with the rulings, orders or regulations of the interstate commerce commission, the commission may apply by petition or otherwise to the interstate commerce commission or to any court of competent jurisdiction for relief.

History.

1913, ch. 61, § 32, p. 247; reen. C.L. 106:86; C.S., § 2454; I.C.A., § 59-506.

STATUTORY NOTES

Cross References.

Interstate commerce, exception concerning,
§ 61-714.

section, was repealed by Act Oct. 17, 1978,
P.L. 95-473.

Federal References.

Act of February 4, 1887, referred to in this

JUDICIAL DECISIONS

Cited in: *Alpert v. Boise Water Corp.*, 118
Idaho 136, 795 P.2d 298 (1990).

61-507. Determination of rules and regulations. — The commission shall prescribe rules and regulations for the performance of any service or the furnishings of any commodity of the character furnished or supplied by any public utility, and, on proper demand and tender of rates, such public utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules.

History.

1913, ch. 61, § 33, p. 247; reen. C.L. 106:87;
C.S., § 2455; I.C.A., § 59-507.

JUDICIAL DECISIONS

ANALYSIS

Authority to prescribe rules.
Right to water service.

Authority to Prescribe Rules.

Commission has full authority to prescribe rules and regulations for the performance of any service or the furnishing any commodity by a public utility. *Coeur d'Alene v. Public Utils. Comm'n*, 29 Idaho 508, 160 P. 751 (1916).

By attempting to exercise jurisdiction over third parties and to allocate costs for relocation of electricity transmission facilities to those third parties that had not requested that service, the Idaho public utilities commission exceeded its authority. *Ada County Highway Dist. v. Idaho Pub. Utils.*, 151 Idaho 1, 253 P.3d 675 (2011).

The phrase "performance of any service" indicates action by the public utility, which reasonably includes removing and reinstall-

ing electricity distribution facilities. *Ada County Highway Dist. v. Idaho Pub. Utils.*, 151 Idaho 1, 253 P.3d 675 (2011).

Right to Water Service.

Where lot owner constructs building and places water pipes and fixtures therein and extends same to street adjoining, and thereupon tenders to water company the monthly rent charged by it, it becomes the duty of company to make necessary tap and connections and furnish property owner with water as demanded. *Bothwell v. Consumers' Co.*, 13 Idaho 568, 92 P. 533 (1907).

Cited in: *Grever v. Idaho Tel. Co.*, 94 Idaho 900, 499 P.2d 1256 (1972); *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

61-508. Improvements may be ordered — Cost. — Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to or changes in the existing plant, scales, equipment, apparatus, facilities or other physical property of any public utility or of any two (2) or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or

the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing such additions, extensions, repairs, improvements, or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, requires joint action by two (2) or more public utilities the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at the joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time, such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structures or structure, the commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.

History.

1913, ch. 61, § 34, p. 247; reen. C.L. 106:88; C.S., § 2456; I.C.A., § 59-508.

JUDICIAL DECISIONS

ANALYSIS

Rules and regulations. *
Rule of reasonableness.

Rules and Regulations.

The public utilities commission has the authority to prescribe rules and regulations for the performance of any service or furnishing any commodity by a public utility. *Coeur d'Alene v. Public Utils. Comm'n*, 29 Idaho 508, 160 P. 751 (1916).

Rule of Reasonableness.

The word "reasonable" is to be noted. In determining what is reasonable, the rights of both consumer and proprietor must be consid-

ered. *Murray v. Public Utils. Comm'n*, 27 Idaho 603, 150 P. 47 (1915).

Order directing extension of water plant is unreasonable where it does not appear that company has valid existing franchise. *Murray v. Public Utils. Comm'n*, 27 Idaho 603, 150 P. 47 (1915).

Cited in: *Afton Energy, Inc. v. Idaho Power Co.*, 107 Idaho 781, 693 P.2d 427 (1984); *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

61-509. Regulation of train and street car service. — Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that any railroad corporation or street railroad corporation does not run a sufficient number of trains or cars, or possess or operate sufficient motive power, reasonably to accommodate the traffic, passenger or freight, transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency or at a reasonable or proper time having regard to safety, or does not stop the same at proper places, or does not run

any train or trains, car or cars upon a reasonable time schedule for the run, the commission shall have the power to make an order directing any such railroad corporation or street railroad corporation to increase the number of its trains or of its cars or its motive power or to change the time for starting its trains or cars, to change the time schedule for the run of any train or car, or to change the stopping place or places thereof or to make any other order that the commission may determine to be reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation.

History.

1913, ch. 61, § 35, p. 247; reen. C.L. 106:89;
C.S., § 2457; I.C.A., § 59-509.

STATUTORY NOTES

Cross References.

Railroad corporation, definition, § 61-111.
Regulation and control of railroads, Idaho
Const., Art. XI, § 5.

Street railroad corporation, definition,
§ 61-109.

61-510. Railroad service — Physical connections. — Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the public convenience and necessity would be subserved by having connections made between the tracks of any two (2) or more railroad or street railroad corporations, so that the cars may readily be transferred from one to the other, at any of the points hereinafter in this section specified, the commission may order any two (2) or more such corporations owning, controlling, operating, or managing tracks of the same gauge to make physical connections at any and all crossings, and at all points where a railroad or street railroad shall begin or terminate or run near to any other railroad or street railroad. After the necessary franchise or permit has been secured from the city and county, or city or town, the commission may likewise order such physical connection, within such city and county, or city or town, between two (2) or more railroads which enter the limits of the same. The commission shall by order direct whether the expense of the connections referred to in this section shall be borne jointly or otherwise.

History.

1913, ch. 61, § 36, p. 247; reen. C.L. 106:90;
C.S., § 2458; I.C.A., § 59-510.

STATUTORY NOTES

Cross References.

Extensions and branches, construction,
§ 62-107.
Railroad corporation, definition, § 61-111.

Recording of orders, § 61-608.

Street railroad corporation, definition,
§ 61-109.

JUDICIAL DECISIONS

Limited to Intrastate Traffic.

This section, when construed in connection

with U.S. Const., Art. 1, § 8, empowers public
utilities commission to require physical con-

nections between lines for purpose of intra-state shipments only, and in no way enlarges jurisdiction of commission so as to include interstate shipments. *Cole v. Northern Pac. Ry.*, 43 Idaho 482, 252 P. 406 (1927).

61-511. Railroad service — Spurs and switch connections. — Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that application has been made by any corporation or person to a railroad corporation for a connection or spur as provided in sections 61-324 and 61-325[, Idaho Code], and that the railroad corporation has refused to provide such connection or spur and that the applicant is entitled to have the same provided for him under said sections, the commission shall make an order requiring the providing of such connection or spur and the maintenance and use of the same upon reasonable terms which the commission shall have the power to prescribe. Whenever any such connection or spur has been so provided any corporation or persons shall be entitled to connect with the private track, tracks or railroad thereby connected with the railroad of the railroad corporation and to use the same or to use the spur so provided upon payment to the person or persons incurring the primary expense of such private track, tracks or railroad, or the connection therewith or of such spur, of a reasonable proportion of the cost thereof to be determined by the commission, after notice to the interested parties and a hearing thereon: provided, that such connection and use can be made without unreasonable interference with the rights of the party or parties incurring such primary expense.

History. 1913, ch. 61, § 37a, p. 247; compiled and reen. C.L. 106:91; C.S., § 2459; I.C.A., § 59-511.

STATUTORY NOTES

<p>Cross References. Railroad corporation, definition, § 61-111. Recording of orders, § 61-608. Spurs, § 61-325. Switch connections, § 61-324.</p>	<p>Compiler's Notes. The bracketed insertion in the first sentence was added by the compiler to conform to the statutory citation style.</p>
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61-512. Railroad service — Cars of connecting railroad. — The commission shall likewise have the power to require any railroad corporation to switch to private spurs and industrial tracks upon its own railroad the cars of a connecting railroad corporation and to prescribe reasonable terms and compensation for such service.

History.
1913, ch. 61, § 37b, p. 247; reen. C.L. 106:92; C.S., § 2460; I.C.A., § 59-512.

STATUTORY NOTES

<p>Cross References. Railroad corporation, definition, § 61-111.</p>	<p>Recording of orders, § 61-608.</p>
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61-513. Telephone companies — Physical connections. — When-

ever the commission, after a hearing had upon its own motion or upon complaint, shall find that a physical connection can reasonably be made between the lines of two (2) or more telephone corporations whose lines can be made to form a continuous line of communication, by the construction and maintenance of suitable connections for the transfer of messages or conversations, and that public convenience or necessity will be subserved thereby, or shall find that two (2) or more telephone corporations have failed to establish joint rates, tolls or charges for service by or over their said lines and that joint rates, tolls or charges ought to be established, the commission may, by its order, require that such connections be made, and that conversations be transmitted and messages transferred over such connection under such rules and regulations as the commission may establish, and prescribe through lines and joint rates, tolls and charges to be made, and to be used, observed and in force in the future. If such telephone corporations do not agree upon the division between them of the cost of said physical connections or connections of the division of the joint rates, tolls or charges established by the commission over such through lines, the commission shall have authority after further hearing, to establish such division by supplemental order.

History.

1913, ch. 61, § 38, p. 247; compiled and

reen. C.L. 106:93; C.S., § 2461; I.C.A., § 59-513; am. 1984, ch. 106, § 6, p. 246.

STATUTORY NOTES

Cross References.

Recording of orders, § 61-608.

Telephone corporation, definition, § 61-121.

Telephone line, definition, § 61-120.

JUDICIAL DECISIONS

Jurisdiction of Commission.

If, after the rates are set under a connection agreement, the utilities cannot agree on the division, the commission may make such division by supplemental order, but the division must be prospective in effect, with failure of agreement between the companies a condition precedent to the commission's authority. *Lemhi Tel. Co. v. Mountain States Tel. & Tel. Co.*, 98 Idaho 692, 571 P.2d 753 (1977).

Where two companies entered a connection agreement, the terms of which subsequently gave rise to a dispute, the commission had no jurisdiction under this section since the commission is only given authority where utilities fail to agree on connections and joint rates or where such agreement is contrary to the public interest. *Lemhi Tel. Co. v. Mountain States Tel. & Tel. Co.*, 98 Idaho 692, 571 P.2d 753 (1977).

61-514. Joint use of plant and equipment. — Whenever the commission, after a hearing had upon its own motion or upon complaint of a public utility affected, shall find that public convenience and necessity require the use by one (1) public utility of the conduits, subways, tracks, wires, poles, pipes or other equipment, or any part thereof, on, over or under any street or highway, and belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the

commission may by order direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use be directed, the public utility to whom the use is permitted shall be liable to the owner, or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment for such damage as may result therefrom to the property of such owner or other users thereof.

History.

reen. C.L. 106:94; C.S., § 2462; I.C.A., § 59-1913, ch. 61, § 39, p. 247; compiled and 514.

STATUTORY NOTES

Cross References.

Recording of orders, § 61-608.

61-515. Safety regulations. — The commission shall have the power, after a hearing had upon its own motion or upon complaint, by general or special orders, or regulations, or otherwise, to require every public utility to maintain and operate its line, plant, system, equipment, apparatus and premises in such manner as to promote and safeguard the health and safety of its employees, customers and the public, and to this end to prescribe the installation, use, maintenance and operation of appropriate safety or other devices or appliances, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, customers or the public may demand.

History.

C.S., § 2463; I.C.A., § 59-515; am. 1979, ch. 1913, ch. 61, § 40, p. 247; reen. C.L. 106:95; 218, § 1, p. 603.

JUDICIAL DECISIONS

ANALYSIS

Burden of proof.
Hearings.
Judicial notice of orders.
Railroad marshaling yard.

Burden of Proof.
Where electric power company complied with national safety code and orders of public utility commission for installation of overhead wires a prima facie case of absence of negligence on its part was established in suit to recover damages for death of construction worker when boom of a crane operated in street of city contacted the wire while decedent was engaged in steadying one end of the beam, and burden of proof was upon plaintiff to show some actionable negligence on the part of the company. *Probart v. Idaho Power Co.*, 74 Idaho 119, 258 P.2d 361 (1953).

Hearings.
Where the record disclosed that zoning requirements, and pollution and health regulations, would be met by proposed railroad classification yard and where a plan had been

agreed upon for road rearrangement, safer highway-railway crossings and grade separations, the utilities commission did not abuse its discretionary power in finding that a full scale hearing and investigation into the proposed construction of the classification yard was not justified. *Burlington Out Now v. Burlington N., Inc.*, 96 Idaho 594, 532 P.2d 936 (1975).

Judicial Notice of Orders.
Supreme court will take judicial notice of orders of public utilities commission adopted pursuant to statutory authority. *Probart v. Idaho Power Co.*, 74 Idaho 119, 258 P.2d 361 (1953).

Railroad Marshaling Yard.
This section gives the public utilities commission authority to assume jurisdiction over

a proposed classification and marshaling yard of a railroad corporation if it has reason to believe there is a real or genuine threat spe-

cifically to the health or safety of the public. *Burlington Out Now v. Burlington N., Inc.*, 96 Idaho 594, 532 P.2d 936 (1975).

61-515A. Safety and sanitary equipment and conditions. — Every person operating a common carrier railroad in this state shall equip each locomotive and caboose used in train or a yard switching service and every car used in passenger service with a first aid kit of a type approved by the commission, which kit shall be plainly marked and be readily visible and accessible and be maintained in a fully equipped condition.

Each locomotive, caboose and change room shall be furnished with sanitary cups and sanitary ice-cooled or refrigerated drinking water.

Each locomotive, caboose and change room shall be maintained in a safe and sanitary condition at all times.

For the purpose of this section a "locomotive" shall include all railroad engines propelled by any form of energy and used in rail line haul or yard switching service.

History.

I.C., § 61-515A, as added by 1971, ch. 72,
§ 1, p. 167.

61-516. Priority designation for electric transmission projects. —

(1) The legislature finds that the timely review and permitting of electric transmission facilities is critical to the well-being of the citizens and the economy of this state and the region. The legislature further finds that enactment of this section is necessary to promote the public interest. The purpose of this section is for the public utilities commission to determine whether the construction of electric transmission facilities should be designated to receive priority processing by state agencies. This section is not intended to affect a state agency's decision-making authority to approve, deny or condition an application to construct electric transmission facilities.

(2) For purposes of this section the following definitions shall apply:

(a) "Electric transmission facilities" means the construction of high voltage transmission lines with an operating level capacity of two hundred thirty thousand (230,000) volts or more and associated substations and switchyards.

(b) "State agency" means every state department, division, commission or board.

(3) Any person intending to construct eligible electric transmission facilities in Idaho may file an application with the public utilities commission seeking priority designation. An order granting priority designation shall not constitute regulatory approval or bind any state agency. If the commission issues an order granting priority designation, state agencies subsequently involved in the permitting or siting processes for such electric transmission facilities shall be required to give the application priority or immediate attention as it relates to reviews, permits, reports, studies or comments.

(4) In reviewing an application for priority designation, the public utilities commission shall base its findings on whether the proposed construction of electric transmission facilities will:

- (a) Benefit Idaho customers and the Idaho economy;
- (b) Improve electric transmission capacity and reliability in Idaho and the region; and
- (c) Promote the public interest.

(5) Applications for priority designation filed with the public utilities commission shall be governed by the commission’s rules of administrative procedure. The commission may promulgate administrative rules in compliance with chapter 52, title 67, Idaho Code, or may issue procedural orders necessary to implement this section.

History.

I.C., § 61-516, as added by 2009, ch. 9, § 1, p. 11.

STATUTORY NOTES

Prior Laws.

Former § 61-516, which comprised S.L. 1913, ch. 61, § 41, p. 247; am. 1917, ch. 133, § 1, p. 442; compiled and reen. C.L. 106:96;

C.S. § 2464; I.C.A., § 59-516, governing safety procedures at unsafe railroad crossings, was repealed by S.L. 1979, ch. 218, § 2.

61-517. Accidents — Investigation — Order or recommendation of commission — Report by utility. — The commission shall investigate the cause of all accidents occurring within this state upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the commission, investigation by it, and shall have the power to make such order or recommendation with respect thereto as in its judgment may seem just and reasonable: provided, that neither the order or recommendation of the commission, nor any accident report filed with the commission, shall be admitted as evidence in any action for damages based on or arising out of the loss of life, or injury to person or property in this section referred to. Every public utility is hereby required to file with the commission, under such rules and regulations as the commission may prescribe, a report of each accident so occurring of such kinds or classes as the commission may from time to time designate.

History.

1913, ch. 61, § 42, p. 247; compiled and

reen. C.L. 106:97; C.S., § 2465; I.C.A., § 59-517.

JUDICIAL DECISIONS

Cited in: *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

RESEARCH REFERENCES

A.L.R. — Admissibility in evidence, on issue of negligence, of codes or standards of safety issued or sponsored by governmental

body or by voluntary association. 58 A.L.R.3d 148.

61-518. Railroad service — Furnishing cars. — Every railroad

company shall, upon reasonable notice, furnish to all persons or corporations who may apply therefor and offer property for transportation, sufficient and suitable cars for the transportation of such property in carload lots. In case at any time a railroad company has not sufficient cars to meet all the requirements for transportation of property in carload lots, all cars available for such purpose shall be distributed among the several applicants therefor without unjust discrimination between shippers, localities or competitive or noncompetitive points, but preference may always be given in the supplying of cars for shipment of live stock or perishable property.

History.

1913, ch. 61, § 43a, p. 248; reen. C.L.
106:98; C.S., § 2466; I.C.A., § 59-518.

61-519. Express service — Delivery of telephone messages. — The commission shall also have power to provide the time within which express packages shall be received, gathered, transported and delivered at destination and the limits within which express packages shall be gathered and distributed and telephone messages delivered without extra charge.

History.

106:99; C.S., § 2467; I.C.A., § 59-519; am.
1913, ch. 61, § 43b, p. 247; reen. C.L. 1984, ch. 106, § 7, p. 246.

STATUTORY NOTES

Cross References.

Acceptance and transmission of telegraph
and telephone messages, § 62-801 et seq.

61-520. Service of electric, gas, and water corporations — Determination of standards. — The commission shall have power, after hearing had upon its own motion or upon complaint, to ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements or service to be furnished, imposed, observed and followed by all electrical, gas and water corporations; to ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product, commodity or service furnished or rendered by any such public utility; to prescribe reasonable regulations for the examination and testing of such product, commodity or service and for the measurement thereof; to establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurements; and to provide for the examination and testing of any and all appliances used for the measurement of any product, commodity or service of any such public utility.

History.

1913, ch. 61, § 44a, p. 247; reen. C.L.
106:100; C.S., § 2468; I.C.A., § 59-520.

JUDICIAL DECISIONS

ANALYSIS

Charges for tapping mains.
Jurisdiction.

Charges for Tapping Mains.

Private waterworks company cannot require consumers to pay costs of piping water from mains to property line, as it is duty of company to construct at own expense all of its system within its franchise limits. *Pocatello Water Co. v. Standley*, 7 Idaho 155, 61 P. 518 (1900); *Bothwell v. Consumers' Co.*, 13 Idaho 568, 92 P. 533 (1907); *Hatch v. Consumers' Co.*, 17 Idaho 204, 104 P. 670 (1909), *aff'd*, 224 U.S. 148, 32 S. Ct. 465, 56 L. Ed. 703 (1912).

of application of company for a certificate of public convenience and necessity permitting company to transport and distribute natural gas from Canada, even though company might also have to secure a certificate from federal power commission. *In re Trans-Northwest Gas, Inc.*, 72 Idaho 215, 238 P.2d 1141 (1951).

Cited in: *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

Jurisdiction.

Public utilities commission had jurisdiction

61-521. Authority to enter premises. — The commissioners and their officers and employees shall have power to enter upon any premises occupied by any public utility, for the purpose of making the examinations and tests and exercising any of the other powers provided for in this act, and to set up and use on such premises any apparatus and appliances necessary therefor. The agents and employees of such public utility shall have the right to be present at the making of such examination and tests.

History.

1913, ch. 61, § 44b, p. 247; *reen. C.L.* 106:101; *C.S.*, § 2469; *I.C.A.*, § 59-521.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-522. Consumer may have commodity or appliance tested. — Any consumer or user of any product, commodity or service of a public utility may have any appliance used in the measurement thereof tested upon paying the fees fixed by the commission. The commission shall establish and fix reasonable fees to be paid for testing such appliances on the request of the consumer or user, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance is found defective or incorrect to the disadvantage of the consumer or user under such rules and regulations as may be prescribed by the commission.

History.

1913, ch. 61, § 44c, p. 247; *reen. C.L.* 106:102; *C.S.*, § 2470; *I.C.A.*, § 59-522.

61-523. Valuation. — The commission shall have power to ascertain the value of the property of every public utility in this state and every fact which, in its judgment, may or does have any bearing on such value. The commission shall have power to make revaluations from time to time and to ascertain all new construction, extensions and additions to the property of every public utility.

History.

1913, ch. 61, § 45, p. 247; reen. C.L. 106:103; C.S., § 2471; I.C.A., § 59-523.

STATUTORY NOTES

Cross References.

Hearings to determine valuations, § 61-640.

JUDICIAL DECISIONS

ANALYSIS

Accrued depreciation.
Acquisition adjustment.
Adoption of complainant's appraisal.
Appeal.
Construction overhead.
Definitions.
Effect upon rate structure.
Evidence in valuation.
Franchise.
Going concern value.
In general.
Physical equipment.
Property not in use.
Rate making and condemnation.
Rate making and taxation.
Revaluation.
Water rights.
Working capital.

Accrued Depreciation.

While deduction should be made for actual depreciation in valuing plant for rate making, no deduction should be made for depreciation where plant is giving as good service as new plant. *Murray v. Public Utils. Comm'n*, 27 Idaho 603, 150 P. 47 (1915).

No deduction should be made in rate valuation for accrued depreciation of telephone plant capable of giving 100 per cent service. *Coeur d'Alene v. Public Utils. Comm'n*, 29 Idaho 508, 160 P. 751 (1916).

Acquisition Adjustment.

There was substantial evidence in the record to support the commission's determination that the acquisition adjustment, paid by a public utility in purchasing a former resale customer, was paid merely to recapture accelerated depreciation and investment tax credit, the benefit of which accrued solely to

former resale customer's former ratepayers, and that the limited benefit of the acquisition of the former resale customer's plant to the Idaho ratepayers did not justify adding the acquisition adjustment to the Idaho rate base. *Utah Power & Light Co. v. Idaho Public Util. Comm'n*, 107 Idaho 446, 690 P.2d 901 (1984).

Adoption of Complainant's Appraisal.

Complainant's appraisal of telephone plant lower than one by utility's engineer may be adopted for purpose of showing that rates are not excessive. *Coeur d'Alene v. Public Utils. Comm'n*, 29 Idaho 508, 160 P. 751 (1916).

Appeal.

If value as found by public utility commission is not in fact its cash value either for rate making or for taxation, an appeal is provided by statute. *Northwest Light & Water Co. v. Alexander*, 29 Idaho 557, 160 P. 1106 (1916).

Appeal taken from interlocutory orders be-

fore final order in valuation case was entered is premature and will be dismissed. *Capital Water Co. v. Public Utils. Comm'n*, 41 Idaho 19, 237 P. 423 (1925) (certain orders held interlocutory).

Construction Overhead.

When the evidence shows that there is in a utility property a value in excess of the cost of labor and material, a reasonable amount should be allowed therefor, and where it is not possible to produce better evidence, such an allowance may be made on the estimate of engineers. *Boise Artesian Water Co. v. Public Utils. Comm'n*, 40 Idaho 690, 236 P. 525 (1925).

Interest during construction is a proper element of valuation. *Boise Artesian Water Co. v. Public Utils. Comm'n*, 40 Idaho 690, 236 P. 525 (1925).

Definitions.

Value for the purpose of this section does not necessarily mean market or sale value, but is the value of that which the utility employs for the public convenience. *Utah Power & Light Co. v. Idaho Public Util. Comm'n*, 107 Idaho 446, 690 P.2d 901 (1984).

Effect Upon Rate Structure.

This section has never been interpreted to hold that it gives a ratepayer an entitlement to utility service at the lowest possible rates; this section simply gives the Idaho public utilities commission the power to determine the value of the utility's property. *Miles v. Idaho Power Co.*, 116 Idaho 635, 778 P.2d 757 (1989).

Evidence in Valuation.

In valuing property of utility, commission should require evidence relating to cost of reproduction or replacement, actual cost, depreciation, earning capacity, present service condition, investment, service furnished, and any and all relevant evidence. *Boise Artesian Water Co. v. Public Utils. Comm'n*, 40 Idaho 690, 236 P. 525 (1925).

The commission, as finder of fact on the question of value, need not weigh and balance the evidence presented to it but is free to accept certain evidence and disregard other evidence. *Utah Power & Light Co. v. Idaho Public Util. Comm'n*, 107 Idaho 446, 690 P.2d 901 (1984).

Franchise.

Cost of litigation over franchise is not conclusive in estimating its value for rate making purposes. *Boise Artesian Water Co. v. Public Utils. Comm'n*, 40 Idaho 690, 236 P. 525 (1925).

Allowance by commission of approximately one half the amount spent for attorneys' fees in litigation was held sufficient. *Boise Arte-*

sian Water Co. v. Public Utils. Comm'n, 40 Idaho 690, 236 P. 525 (1925).

Going Concern Value.

In absence of evidence showing expense incurred in building up business, no separate allowance should be made on account of plant being going concern in value for rate making, but that fact should be considered in estimating value. *Murray v. Public Utils. Comm'n*, 27 Idaho 603, 150 P. 47 (1915); *Boise Artesian Water Co. v. Public Utils. Comm'n*, 40 Idaho 690, 236 P. 525 (1925); *Consumers' Co. v. Public Utils. Comm'n*, 41 Idaho 498, 239 P. 730 (1925); *Capital Water Co. v. Public Utils. Comm'n*, 44 Idaho 1, 262 P. 863 (1926).

In General.

Ascertainment of just rate involves reasonable cost of plant, production, transportation to point of use and so forth. *Federal Mining & Smelting Co. v. Public Utils. Comm'n*, 26 Idaho 391, 143 P. 1173 (1914).

Rule of cost of reproduction less depreciation adopted by commission is correct general rule; thus, in ascertaining value of water plant for rate making the worth of new plant with proper discount for age and accrued depreciation should be measure of value rather than cost of exact duplication. *Murray v. Public Utils. Comm'n*, 27 Idaho 603, 150 P. 47 (1915).

Value in this connection does not strictly mean market value or sale value; for value of property of utility for rate making purposes must be measured somewhat by use to which it is devoted. *Boise Artesian Water Co. v. Public Utils. Comm'n*, 40 Idaho 690, 236 P. 525 (1925).

Value of property of utility is to be determined as of date that inquiry is made. *Boise Artesian Water Co. v. Public Utils. Comm'n*, 40 Idaho 690, 236 P. 525 (1925).

Commission must so value property of a utility as to cause it to receive fair return for use of its property. *Boise Artesian Water Co. v. Public Utils. Comm'n*, 40 Idaho 690, 236 P. 525 (1925).

Utility cannot require that scale of high prices shall be the sole basis for determining value, and the public cannot expect that existing high prices should be wholly ignored in the process of valuation. *Boise Artesian Water Co. v. Public Utils. Comm'n*, 40 Idaho 690, 236 P. 525 (1925).

Physical Equipment.

An allowance should be made for office furniture, horses, tools, materials on hand and cost of improving ground around reservoir, in value of water plant for rate making. *Murray v. Public Utils. Comm'n*, 27 Idaho 603, 150 P. 47 (1915).

Property Not in Use.

No allowance should be made for paving over mains in value of a water plant for rate

making, where it is not necessary to place or replace mains and hydrant connections. *Murray v. Public Utils. Comm'n*, 27 Idaho 603, 150 P. 47 (1915).

Adequacy of service and necessity for stand-by service are questions peculiarly within the province of the commission. *Boise Artesian Water Co. v. Public Utils. Comm'n*, 40 Idaho 690, 236 P. 525 (1925).

Finding of commission that steam pumping plant which had been replaced by electric plant was not reasonably necessary was upheld. *Boise Artesian Water Co. v. Public Utils. Comm'n*, 40 Idaho 690, 236 P. 525 (1925).

Rate Making and Condemnation.

The public can no more take private property without just compensation, by fixing too low a value for rate making, than by fixing too low a value for condemnation. *Boise Artesian Water Co. v. Public Utils. Comm'n*, 40 Idaho 690, 236 P. 525 (1925).

Rate Making and Taxation.

Valuation by commission under this section may be adopted by state equalization board as full cash value for taxation purposes. *Washington Water Power Co. v. Kootenai County*, 270 F. 369, modified on other grounds, 273 F. 524 (9th Cir. 1921).

Statutes confer limited jurisdiction upon public utilities commission to place a valuation upon property used by public utilities; but findings of value made by commission are not binding upon the state board of equalization. They are admissible in evidence before such board and may be regarded as *prima*

facie just, reasonable and correct. *Northwest Light & Water Co. v. Alexander*, 29 Idaho 557, 160 P. 1106 (1916).

Basis of valuation for taxation and rate making are not necessarily identical and record in this case shows that commission in valuing property for rate making did not take into consideration certain property which was assessed by board of equalization for purposes of taxation. *Northwest Light & Water Co. v. Alexander*, 29 Idaho 557, 160 P. 1106 (1916).

Revaluation.

Commission has power from time to time to cause further hearings and investigations to be had for purpose of revaluation. *Consumers' Co. v. Public Utils. Comm'n*, 40 Idaho 772, 236 P. 732 (1925).

Water Rights.

Present market value of the water right is a proper element to be taken into consideration in ascertaining value of water plant for rate-making purposes. *Murray v. Public Utils. Comm'n*, 27 Idaho 603, 150 P. 47 (1915).

Working Capital.

Sum necessary for working capital of utility is within sound discretion of commission and in absence of abuse of discretion, such allowance will not be set aside. *Boise Artesian Water Co. v. Public Utils. Comm'n*, 40 Idaho 690, 236 P. 525 (1925); *Capital Water Co. v. Public Utils. Comm'n*, 44 Idaho 1, 262 P. 863 (1926).

Cited in: *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Utilities, § 98 et seq.

C.J.S. — 73B C.J.S., Public Utilities, §§ 40 to 48.

61-524. System of accounts. — The commission shall have power to establish a system of accounts to be kept by the public utilities subject to its jurisdiction, or to classify said public utilities and to establish a system of accounts for each class and to prescribe the manner in which such accounts shall be kept: provided, that the system of accounts to be kept by railroad corporations and common carriers shall conform to the rules and requirements of the interstate commerce commission in all respects. It may also in its discretion prescribe the forms of accounts, records and memoranda to be kept by such public utilities, including the accounts, records and memoranda of the movement of traffic as well as the receipts and expenditures of moneys, and any other forms, records and memoranda which in the judgment of the commission may be necessary to carry out any of the provisions of this act.

The systems of accounts established by the commission and the forms of accounts, records and memoranda prescribed by it shall not be inconsistent, in the case of corporations subject to the provisions of the act of congress

entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereto, with the systems and forms from time to time established for such corporations by the interstate commerce commission.

Where the commission has prescribed the forms of accounts, records or memoranda to be kept by any public utility not subject to the provisions of the act of congress entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereto, for any of its business, it shall thereafter be unlawful for such public utility to keep any accounts, records or memoranda for such business other than those so prescribed, or those prescribed by or under the authority of any other state or of the United States, excepting such accounts, records or memoranda as shall be explanatory of and supplemental to the accounts, records or memoranda prescribed by the commission.

History.

1913, ch. 61, § 46, p. 247; reen. C.L. 106:104; C.S., § 2472; I.C.A., § 59-524.

STATUTORY NOTES

Cross References.

Annual reports to state tax commission, § 63-706.

Annual reports to utility commission, § 61-405.

Railroads, accounts system, § 61-524.

Federal References.

Act of February 4, 1887, referred to in this section, was repealed by Act Oct. 17, 1978, P.L. 95-473.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

ANALYSIS

Final order.

Purpose of accounts.

Rate basis.

Reconciliation of accounts.

Final Order.

Where 18 warehouse companies filed a petition with the public utilities commission to amend existing schedules of rates by increasing charges for handling grains, peas, and seeds, and commission only increased charge on peas, and withheld further action until a uniform system of accounting was established, which would be ordered forthwith, such order was final and is appealable. *Lewiston Grain Growers, Inc. v. Rooke*, 69 Idaho 374, 207 P.2d 1028 (1949).

Purpose of Accounts.

Accounts of corporations are required to be kept so that in case of controversy over rates or service they may be evidence to which the consumer may appeal. *Federal Mining &*

Smelting Co. v. Public Utils. Comm'n, 26 Idaho 391, 143 P. 1173 (1914).

Rate Basis.

Warehouse companies are entitled to a reasonable return upon their investment from warehouse operations, regardless of fact that part of their income may come from private business instead of public, and commission cannot wait until they establish a uniform system of accounting, but must make a decision upon most accurate information available from existing facts and records. *Lewiston Grain Growers, Inc. v. Rooke*, 69 Idaho 374, 207 P.2d 1028 (1949).

Reconciliation of Accounts.

Commission has the power to require warehouse companies to reconcile differences in

accounts presented by them in hearing on petition for increased rates, and it can require them to justify expenses charged against income from the warehouse, but it cannot deny their right to a decision on their petition on

the sole ground of want or absence of a uniform system of accounts, which the commission is charged to establish. *Lewiston Grain Growers, Inc. v. Rooke*, 69 Idaho 374, 207 P.2d 1028 (1949).

61-525. Depreciation account. — The commission shall have power, after hearing, to require any or all public utilities, except such as are subject to the act of congress entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of accounts as the commission may prescribe. The commission may from time to time ascertain and determine and by order fix the proper and adequate rate of depreciation of the several classes of property of each public utility. Each public utility shall conform its depreciation accounts to the rates so ascertained, determined and fixed, and shall set aside the moneys so provided for out of the earnings and carry the same in a depreciation fund and expend such fund only for such purposes and under such rules and regulations, both as to original expenditure and subsequent replacement as the commission may prescribe. The income from investments of moneys in such public fund shall likewise be carried in such fund.

History.

1913, ch. 61, § 47, p. 247; reen. C.L. 106:105; C.S., § 2473; I.C.A., § 59-525.

STATUTORY NOTES

Federal References.

Act of February 4, 1887, referred to in this

section, was repealed by Act Oct. 17, 1978, P.L. 95-473.

JUDICIAL DECISIONS

Depreciation Reserve.

In fixing rate for electric service, deduction for accrued depreciation is not necessarily in

conflict with sinking fund theory. *Idaho Power Co. v. Thompson*, 19 F.2d 547 (D. Idaho 1927).

61-526. Certificate of convenience and necessity. — No street railroad corporation, gas corporation, electrical corporation, telephone corporation or water corporation, shall henceforth begin the construction of a street railroad, or of a line, plant, or system or of any extension of such street railroad, or line, plant, or system, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction: provided, that this section shall not be construed to require such corporation to secure such certificate for an extension within any city or county, within which it shall have theretofore lawfully commenced operation, or for an extension into territory whether within or without a city or county, contiguous to its street railroad, or line, plant or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it necessary in the ordinary course of its business: and provided

further, that if any public utility in constructing or extending its lines, plant or system, shall interfere or be about to interfere with the operation of the line, plant or system of any other public utility already constructed, or if public convenience and necessity does not require or will require such construction or extension, the commission on complaint of the public utility claiming to be injuriously affected, or on the commission's own motion, may, after hearing, make such order and prescribe such terms and conditions for the locating or type of the line, plant or system affected as to it may seem just and reasonable: provided, that power companies may, without such certificate, increase the capacity of their existing generating plants.

History.

1913, ch. 61, § 48a, p. 247; substantially reen. 1915, ch. 62, § 2, subd. 48a, p. 155; reen.

C.L. 106:106; C.S., § 2474; I.C.A., § 59-526; am. 1970, ch. 134, § 1, p. 327.

STATUTORY NOTES

Cross References.

Air carriers, certificate of convenience and necessity required, § 61-1104.

Recording of orders, § 61-608.

JUDICIAL DECISIONS

ANALYSIS

Auto transit company.

Certificate.

Competition.

Constitutionality.

Hearing on protest.

Jurisdiction.

Preference between applicants.

Proviso concerning power companies.

Railroads.

Unserved area within certified area.

Auto Transit Company.

On an application by auto transportation company for permit to extend operations, public utility commission did not err in not considering evidence relative to granting or refusal of certificate of convenience and necessity. In re Garrett Transf. & Storage Co., 53 Idaho 200, 23 P.2d 739 (1933).

Certificate.

If there are other methods or machinery that might be used in plant that would reduce cost of production, commission may direct utility to install such, and in case it refuses, upon proper application may issue certificate of convenience to utility that will do so. Idaho Power & Light Co. v. Blomquist, 26 Idaho 222, 141 P. 1083 (1914).

Certificate required and company ordered to desist from further construction in case of company securing franchise few days before act became effective but not accepting same until later. No construction was begun prior to such time, nor contract let for building of

engine, although approximately an expenditure of \$25,000 had been made before filing of complaint. Idaho Power & Light Co. v. Blomquist, 26 Idaho 222, 141 P. 1083 (1914).

The Idaho public utilities commission had the authority to require plaintiff to obtain approval prior to extending facilities into uncertified buffer areas. Eagle Water Co. v. Idaho Pub. Utils. Comm'n, 130 Idaho 314, 940 P.2d 1133 (1997).

Competition.

Intent of legislature is to replace competition by regulation since unregulated competition is not needed to protect the public against unreasonable rates or unsatisfactory service, and there can be no justification for a duplication of public utility plants in order to prevent monopoly. Idaho Power & Light Co. v. Blomquist, 26 Idaho 222, 141 P. 1083 (1914).

Service of manufactured gas is not entitled to protection to the extent of denial of natural gas service. McFayden v. Public Utils. Consol. Corp., 50 Idaho 651, 299 P. 671 (1931).

Protecting existing investments from even wasteful competition is secondary to securing adequate service for public. *McFayden v. Public Utils. Consol. Corp.*, 50 Idaho 651, 299 P. 671 (1931).

Under the provision of the auto transportation act, it was not the duty of the utilities commission to protect either common or private carriers competing in the open market; however, it must consider all circumstances and public interest. *Malone v. Van Etten*, 67 Idaho 294, 178 P.2d 382 (1947).

Constitutionality.

Legislative prohibition of competition is not unconstitutional. *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083 (1914).

Granting or withholding of certificate is an exercise of state's power to determine whether the rights and interests of the general public will be advanced by the prosecution of the enterprise which it is proposed to carry on for the service of the public. *McFayden v. Public Utils. Consol. Corp.*, 50 Idaho 651, 299 P. 671 (1931).

The legislature has authority to designate carriers or utilities which must secure from the public utilities commission certificate of convenience and necessity before beginning operations. In *re Garrett Transf. & Storage Co.*, 53 Idaho 200, 23 P.2d 739 (1933).

When an intangible property right such as a certificate, franchise, permit or contract is modified or revoked according to its terms, no taking of the property has occurred. Thus, the property right within the telephone provider's certificate of convenience and necessity was accepted subject to statutory conditions, which included the public utilities commission's authority to modify the certificate by revoking the right to a portion of unserved area when the showing was made that the public convenience and necessity did not require the telephone provider's extension of service to the area. *Cambridge Tel. Co. v. Pine Tel. Sys.*, 109 Idaho 875, 712 P.2d 576 (1985).

The telephone provider was not unconstitutionally deprived of its certificate where the certificate was modifiable by a nonarbitrary application of a public convenience and necessity standard, a condition of the certificate, based upon substantial competent evidence that the telephone provider would have to spend an additional \$47,000 to serve an unserved area within a certified area that could be served with only minimal expenditures by another utility and the residents of the disputed area would be better served by the other utility's toll-free service to neighboring communities as opposed to the telephone provider's service, which included the possibility of long distance toll charges to those communities. *Cambridge Tel. Co. v. Pine Tel. Sys.*, 109 Idaho 875, 712 P.2d 576 (1985).

Hearing on Protest.

Commission erred in granting application of company for a certificate of public convenience and necessity to transport and distribute natural gas imported from Canada without granting a hearing to protestants after stating that ruling on motion to dismiss by protestants would be deferred for time being. *Application of Trans-Northwest Gas, Inc.*, 72 Idaho 215, 238 P.2d 1141 (1951).

Jurisdiction.

Public utilities commission had jurisdiction of application of company for a certificate of public convenience and necessity permitting company to transport and distribute natural gas from Canada, even though company might also have to secure a certificate from federal power commission. *Application of Trans-Northwest Gas, Inc.*, 72 Idaho 215, 238 P.2d 1141 (1951).

The commission does not have jurisdiction to entertain a complaint by electrical nonprofit cooperatives protesting against extension of lines of a public utility into their territories. *Clearwater Power Co. v. Washington Water Power Co.*, 78 Idaho 150, 299 P.2d 484 (1956).

Complaint by electrical nonprofit cooperatives for alleged encroachment of their territory by defendant public utility could not be entertained on the ground that public utility had violated the law or some order of the commission and that the public utility had not secured a certificate of public convenience in extending their lines, since such cooperatives were not public utilities and the public utilities commission was only authorized to hear matters where public utilities were injuriously affected. *Clearwater Power Co. v. Washington Water Power Co.*, 78 Idaho 150, 299 P.2d 484 (1956).

The public utilities commission had jurisdiction to decide the issues in petition for declaratory ruling brought by the department of energy (DOE), as signatory to a three-party agreement with the Idaho Power Company (IPC) and the Utah Power and Light Co. (U. P. & L.) for the furnishing of energy to the National Engineering Laboratory (INEL), whereby the DOE sought a ruling that upon the exercise of its right to terminate the agreement, IPC would have the right to be the sole supplier of electricity to INEL. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 112 Idaho 10, 730 P.2d 930 (1986), cert. denied, 484 U.S. 801, 108 S. Ct. 44, 98 L. Ed. 2d 9 (1987).

Preference Between Applicants.

In a declaratory judgment action brought by the department of energy (DOE), the commission correctly decided that, as between two utilities with valid certificates to deliver energy at transmission voltage to the Na-

tional Engineering Laboratory, the utility that was currently and satisfactorily serving the disputed area could continue to do so. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 112 Idaho 10, 730 P.2d 930 (1986), cert. denied, 484 U.S. 801, 108 S. Ct. 44, 98 L. Ed. 2d 9 (1987).

Proviso Concerning Power Companies.

Under the last proviso, no certificate is required to increase the capacity of an existing plant (or even perhaps to build a new plant) and market the product over lines already constructed or to supply an increasing demand in a place already occupied by the utility. The proviso does not grant power to establish new plants and enter new fields, without the certificate. *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083 (1914).

Railroads.

Since a railroad corporation is not included among those utilities which must obtain a certificate of public convenience and necessity from the utilities commission before commencing construction of a new plant, the commission is not required to conduct a full scale hearing and investigation to determine whether railroad corporation's proposed construction of a classification yard is in the public interest. *Burlington Out Now v.*

Burlington N., Inc., 96 Idaho 594, 532 P.2d 936 (1975).

Unserved Area within Certified Area.

It is within the public utilities commission's jurisdiction, as a condition of the certificate of convenience and necessity, to review the extension of service into an unserved area within an already certified area, provided the utility has not substantially completed the extension; the commission may rescind, alter or amend the certificate of convenience and necessity previously issued for an unserved area upon a showing that the "public convenience and necessity" does not require the extension. *Cambridge Tel. Co. v. Pine Tel. Sys.*, 109 Idaho 875, 712 P.2d 576 (1985).

An unserved area previously certified to a utility may not be revoked when the certified utility is ready, willing and able to extend adequate service at reasonable rates, except where the record clearly shows that "public convenience and necessity" do not require the extension of service into a certified but unserved area. *Cambridge Tel. Co. v. Pine Tel. Sys.*, 109 Idaho 875, 712 P.2d 576 (1985).

Cited in: *Afton Energy, Inc. v. Idaho Power Co.*, 107 Idaho 781, 693 P.2d 427 (1984); *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 108 Idaho 943, 703 P.2d 707 (1985); *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

RESEARCH REFERENCES

Am. Jur. — 36 Am. Jur. 2d, Franchises From Public Entities, §§ 49 to 21.

C.J.S. — 37 C.J.S., Franchises, §§ 9 to 20.

61-527. Certificate of convenience and necessity — Exercise of right or franchise. — No public utility of a class specified in the foregoing section shall henceforth exercise any right or privilege, or obtain a franchise, or permit, to exercise such right or privilege, from a municipality or county, without having first obtained from the commission a certificate that the public convenience and necessity require the exercise of such right and privilege; provided, that when the commission shall find, after hearing, that the public utility has heretofore begun actual construction work, and is prosecuting such work in good faith, uninterruptedly, and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted, but not heretofore actually exercised, such public utility may proceed to the completion of such work and may after such completion exercise such right and privilege: provided further, that this section shall not be construed to validate any right or privilege now invalid or hereafter becoming invalid under any law of this state, nor impair any vested right in any franchise or permit heretofore granted.

History.

1913, ch. 61, § 48b, p. 247; substantially

reen. 1915, ch. 62, § 2, subd. 48b, p. 156; reen. C.L. 106:107; C.S., § 2475; I.C.A., § 59-527.

STATUTORY NOTES**Cross References.**

Powers of cities to regulate rates of franchise holders except those subject to regulation by public utilities commission, § 50-330.

Recording of orders, § 61-608.

JUDICIAL DECISIONS**ANALYSIS**

Constitutionality.

Franchise contract.

Franchise rights not accepted.

Jurisdiction.

Constitutionality.

By granting franchise to a public utility corporation, state does not abrogate its right to exercise police power over it. *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083 (1914).

The legislature has authority to designate carriers or utilities which must secure from the public utilities commission certificate of convenience and necessity before beginning operations. In *re Garrett Transf. & Storage Co.*, 53 Idaho 200, 23 P.2d 739 (1933).

Franchise Contract.

A franchise is not a contract until written acceptance is made. *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083 (1914).

Filing of acceptance of franchise prior to time utilities act took effect is unnecessary. Doing work under a franchise is an acceptance of its terms. *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083 (1914).

City may waive a specified manner of acceptance of a franchise and recognize another. *Coeur d'Alene v. Spokane & I.E.R. Co.*, 31 Idaho 160, 169 P. 930 (1917).

Franchise Rights Not Accepted.

Where written acceptance of franchise was not filed until after this act became effective and no work was done under the franchise, utility does not have a contract or vested right in said franchise authorizing it to proceed with construction in said territory without securing certificate of convenience. *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083 (1914).

Jurisdiction.

Complaint by electrical nonprofit cooperatives for alleged encroachment of their territory by defendant public utility could not be entertained on the ground that public utility had violated the law or some order of the commission and that the public utility had not secured a certificate of public convenience in extending their lines since such cooperatives were not public utilities and the public utilities commission was only authorized to hear matters where public utilities were injuriously affected. *Clearwater Power Co. v. Washington Water Power Co.*, 78 Idaho 150, 299 P.2d 484 (1956).

61-528. Certificate of convenience and necessity — Conditions. —

Before any certificate of convenience and necessity may issue[,] a certified copy of its articles of incorporation, or charter, if the applicant be a corporation, shall be filed in the office of the commission. The commission shall have power, after hearing involving the financial ability and good faith of the applicant and necessity of additional service in the community to issue said certificate as prayed for, or to refuse to issue the same, or to issue it for the construction of any portion only of the contemplated street railroad, line, plant or system or extension thereof, or for the partial exercise only of said right or privilege, and may attach to the exercise of the rights granted by said certificate, such terms and conditions as in its judgment the public convenience and necessity may require.

History.

1913, ch. 61, § 48c, p. 247, am. 1915, ch. 62,

§ 2, subd. 48c, p. 156; compiled and reen. C.L. 106:108; C.S., § 2476; I.C.A., § 59-528.

STATUTORY NOTES**Cross References.**

Power of cities to regulate rates of franchise holders not regulated by public utilities commission, § 50-330.

Recording of orders, § 61-608.

Compiler's Notes.

The bracketed insertion in the first sentence was added by the compiler to make the sentence more readable.

JUDICIAL DECISIONS**ANALYSIS****Application.**

Authority of legislature.

Denial of application.

Hearing on protest.

Jurisdiction.

Preference to utility serving area.

Application.

Application for certificate of convenience and necessity, disclosing that proposed service would be provided by corporation to be organized by applicants, is not contrary to statutory requirements. *McFayden v. Public Utils. Consol. Corp.*, 50 Idaho 651, 299 P. 671 (1931).

Authority of Legislature.

The legislature has authority to designate carriers or utilities which must secure from the public utilities commission certificate of convenience and necessity before beginning operations. *In re Garrett Transf. & Storage Co.*, 53 Idaho 200, 23 P.2d 739 (1933).

Denial of Application.

It was error for commission to deny certification to either of two applicants to furnish service on ground that no showing was made that pipeline corporation would extend its line or that either applicant planned to construct line since such extension was a matter within the jurisdiction of the federal power commission and federal power commission would not consider an application if applicant does not have state certificate of authorization. *In re Citizens Utils. Co.*, 82 Idaho 208, 351 P.2d 487 (1960).

Hearing on Protest.

Commission erred in granting application of company for a certificate of public convenience and necessity to transport and distribute in state natural gas imported from Canada without granting a hearing to protestants after stating that ruling on motion to dismiss by protestants would be deferred for time being. *Application of Trans-Northwest Gas, Inc.*, 72 Idaho 215, 238 P.2d 1141 (1951).

Jurisdiction.

Public utilities commission had jurisdiction of application of company for a certificate of public convenience and necessity permitting company to transport and distribute natural gas from Canada, even though company might also have to secure a certificate from federal power commission. *Application of Trans-Northwest Gas, Inc.*, 72 Idaho 215, 238 P.2d 1141 (1951).

The public utilities commission had jurisdiction to decide the issues in petition for declaratory ruling brought by the Department of Energy (DOE), as signatory to a three-party agreement with the Idaho Power Company (IPC) and the Utah Power and Light Co. for the furnishing of energy to the National Engineering Laboratory (INEL), whereby the DOE sought a ruling that upon the exercise of its right to determine the agreement, IPC would have the right to be the sole supplier of electricity to INEL. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 112 Idaho 10, 730 P.2d 930 (1986); 484 U.S. 801, 108 S. Ct. 44, 98 L. Ed. 2d 9 (1987).

Preference to Utility Serving Area.

In a declaratory judgment action brought by the Department of Energy (DOE), the commission correctly decided that, as between two utilities with valid certificates to deliver energy at transmission voltage to the National Engineering Laboratory, the utility that was currently and satisfactorily serving the disputed area could continue to do so. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 112 Idaho 10, 730 P.2d 930 (1986), cert. denied, 484 U.S. 801, 108 S. Ct. 44, 98 L. Ed. 2d 9 (1987).

61-529. Certificate of convenience and necessity — Electricity exclusively for mines excepted. — No certificate of convenience and necessity shall be required under any provision of this act where the electricity is to be used exclusively in operations incident to the working of metalliferous mines and mining claims, mills, or reduction and smelting plants, and the transmission lines and distribution systems are owned by the consumer or where several consumers severally own their individual distribution systems and jointly own, in their own names or through a trustee, the transmission lines used in connection therewith and transmit such electricity, whether generated by themselves or procured from some other source, over such transmission lines and distribution systems without profit, and to be used for their private uses for the purposes aforesaid in places outside the limits of incorporated cities, towns and villages, and not for resale or public use, sale or distribution.

History.

1913, ch. 61, § 48d, p. 247; as added by

1915, ch. 62, § 2, subd. 48d, p. 157; reen. C.L. 106:109; C.S., § 2477; I.C.A., § 59-529.

STATUTORY NOTES

Cross References.

Corporations using electricity exclusively in mining operations excepted from law, § 61-119.

Power of cities to regulate rates of franchise holders except those subject to regulation by public utilities commission, § 50-330.

Recording of orders, § 61-608.

61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch.

61-530. Certificate of convenience and necessity — Port districts and industrial development districts. — No port district or industrial development district within a port district shall acquire by eminent domain any existing and operating railroad facilities, without first having secured from the commission, after hearing, a certificate that such acquisition is necessary for the public convenience and necessity.

History.

I.C., § 61-530, as added by 1970, ch. 3, § 2, p. 4.

STATUTORY NOTES

Cross References.

Port districts, acquisition of property and facilities, § 70-1501.

61-531. Plan for curtailment of electric or gas consumption. — The Idaho public utilities commission shall forthwith direct and require all suppliers of electric power and energy, or natural or manufactured gas, including those otherwise excepted under section 61-104, Idaho Code, except agencies of the federal government, to file with the commission,

within a designated time period, a plan for the curtailment of electric or gas consumption during an emergency.

History.

1975, ch. 238, § 2, p. 646.

STATUTORY NOTES

Compiler's Notes.

Section 1 of S.L. 1975, ch. 238 read, "It is recognized by the legislature of the state of Idaho that electric power and energy, or natural or manufactured gas, within the Pacific

Northwest, including the state of Idaho may become inadequate and insufficient to meet the requirements of consumers in Idaho and by reason thereof an emergency may arise."

61-532. Adoption or rejection of plans — Procedure. — The commission, after notice and hearing pursuant to its rules of practice and procedure, shall consider and act upon the plan or plans submitted and may adopt or reject such plan or plans, or adopt other plan or plans, for such curtailment. In acting upon such plan or plans the commission shall consider the following factors:

- (a) The consistency of the plan with the public health, safety and welfare;
- (b) The technical feasibility of implementation of the plan; and
- (c) The effectiveness with which the plan minimizes the impact of any curtailment.

History.

1975, ch. 238, § 3, p. 646.

61-533. Authority to declare emergency. — The commission shall have authority to declare an emergency, with or without notice, upon finding that an inadequacy or insufficiency of electric power and energy, or natural or manufactured gas threatens the health, safety and welfare of the citizens of this state.

History.

1975, ch. 238, § 4, p. 646.

61-534. Curtailment of service by suppliers in accordance with plans. — Upon declaration that such an emergency exists, the commission shall have authority to require all suppliers of electric power and energy, or natural or manufactured gas, except agencies of the federal government, to curtail service in accordance with the curtailment plans on file with and approved by the commission.

History.

1975, ch. 238, § 5, p. 646.

61-535. Order for curtailment of consumption by consumers. — The commission, in addition to the powers herein granted, upon the declaration of an emergency, may order the curtailment of electric power and gas consumption by consumers as the commission finds reasonable and necessary.

History.

1975, ch. 238, § 6, p. 646.

61-536. Liability of suppliers. — No supplier of electric power or gas shall be liable for (a) actions taken pursuant to an order of the commission, or by reason of curtailment of such electric or gas service pursuant to such order or its curtailment plan on file with and approved by the commission; or (b) inability of a supplier to furnish adequate or sufficient supplies of electric power or gas or refusal to supply electric power or gas when such inability or refusal is due to inadequate or insufficient supplies on the supplier's system occurring as a result of the supplier's being unable to obtain from the commission an order which allows adequate time to construct necessary generating and transmission facilities.

History.

1975, ch. 238, § 7, p. 646; am. 1976, ch. 219, § 1, p. 792.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 1976, ch. 219 provided that the act should take effect on and after July 1, 1976.

61-537. Contracts of suppliers subject to provisions of law. — All contracts of suppliers shall be subject to actions taken and the immunities provided hereunder.

History.

1975, ch. 238, § 8, p. 646.

STATUTORY NOTES**Compiler's Notes.**

Section 9 of S.L. 1975, ch. 238, read: "The provisions of this act are hereby declared to be severable and if any portion of this act or the application of such provision to any person or circumstance is declared invalid for any rea-

son, such declaration shall not affect the validity of remaining portions of this act."

Effective Dates.

Section 10 of S.L. 1975, ch. 238 declared an emergency. Approved March 31, 1975.

61-538. Pole attachments — Regulation. — As used in this section, the term "public utility" includes any person, firm or corporation except a publicly owned utility which owns or controls poles, ducts, conduits or rights-of-way used or useful, in whole or in part, for wire communication, and which are not subject to the jurisdiction of the commission under section 61-129, Idaho Code.

The term "cable television company" means any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof, which transmits television signals for distribution to subscribers of its services for a fee by means of wires or cables connecting its distribution facilities with the customer's television receiver or the customer's equipment connecting to the customer's receiver rather than by transmission of the television signal through the air.

The term “pole attachment” when used in this section means any wire or cable for the transmission of cable television, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telegraph corporation, telephone corporation, electrical corporation or communications right-of-way, duct, conduit or other similar facilities owned or controlled, in whole or in part, by one or more public utilities.

The legislature hereby finds that many public utilities have, through a course of conduct covering many years, made available space on and in their poles, ducts, conduits, and other support structures for use by the cable television industry for pole attachment service, and that the provision of such pole attachment service by such public utilities is and has been a public utility service.

Whenever a public utility and a cable television company are unable to agree upon the rates, terms or conditions for pole attachments or the terms, conditions or cost of production of space needed for pole attachments, then the commission shall establish and regulate the rates, terms and conditions, and cost of providing space needed for pole attachments so as to assure a public utility the recovery of not less than all the additional costs of providing and maintaining pole attachments nor more than the associated capital cost and operating expenses of the public utility attributable to that portion of the pole, duct, or conduit used for the pole attachment including a share of the required support and clearance space. In determining and fixing the rates, terms and conditions, the commission shall consider the interest of the customers of the attaching cable television company, the public utility upon which the attachment is made as well as the customers of the public utility. To the extent applicable, the procedures set forth in title 61, Idaho Code, shall apply under the provisions of this section.

History.

I.C., § 61-538, as added by 1982, ch. 193,
§ 1, p. 520.

61-539. Water rights of an electrical corporation — No commission jurisdiction. — The commission shall have no power or jurisdiction to make any determination, decision, rule, demand, requirement, or issue any order or decree involving or related to the failure or refusal of an electrical corporation to protect its hydropower water rights from depletion or loss to (1) junior priority consumptive water uses for any consumptive purpose prior to November 19, 1982, (2) junior priority consumptive water uses for irrigation where substantial investments in irrigation wells and irrigation equipment were made prior to November 19, 1982, but were not operating in 1982, and (3) junior priority consumptive water uses for domestic, nonconsumptive commercial, nonconsumptive industrial or nonconsumptive municipal uses occurring from and after November 19, 1982.

This section shall apply not only to future proceedings concerning claims the cause for which arose prior to November 19, 1982, but also to proceedings pending before the commission at the time this act becomes effective,

and any claims which might be asserted against the electrical corporation for depletions from uses within (1), (2) or (3) above.

History.

I.C., § 61-539, as added by 1983, ch. 259,
§ 1, p. 689.

STATUTORY NOTES**Compiler's Notes.**

The phrase "at the time this act becomes effective" in the second paragraph refers to the effective date of S.L. 1983, ch. 259, which was effective pursuant to S.L. 1983, ch. 259, § 3, "only after the signing of the contract provided for in Section 61-540, Idaho Code, by the Governor of the State of Idaho and an appropriate electrical corporation."

Effective Dates.

Section 3 of S.L. 1983, ch. 259 read: "An emergency existing therefor, which emer-

gency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, provided, however, that the provisions of Section 1 of this act shall be in full force and effect only after the signing of the contract provided for in Section 61-540, Idaho Code, by the Governor of the State of Idaho and an appropriate electrical corporation." The contract provided for in S.L. 1983, ch. 259, § 3 was signed on October 25, 1984. See http://www.idwr.idaho.gov/News/Issues/SwanFalls/07_08documents/Agreement.pdf.

61-540. Authorizing negotiation and execution of contracts by the state of Idaho with electrical corporations regarding certain water rights identified in section 61-539, Idaho Code. — The governor of the state of Idaho or his designee is hereby empowered to negotiate and the governor to execute a contract on behalf of the state of Idaho with any electrical corporation which has filed or may file suit against water users or possible water users, said electrical corporation seeking to stop junior prior consumptive water uses as a result of Idaho Supreme Court Opinion No. 13794 in "Idaho Power Company vs. State of Idaho, et al," filed November 19, 1982. Each contract shall provide, among other things, that (1) all consumptive water users who have beneficially used water for any consumptive purpose prior to November 19, 1982, or any person or persons who have previously made substantial investments in irrigation wells and irrigation equipment and have pending a water permit or application, even though such irrigation wells and irrigation equipment were not in operation prior to November 19, 1982, may continue the water licensing process, (2) persons included within the provisions of (1) above are third party beneficiaries of said contract, (3) the electrical corporation shall, where any suit is pending in which a person is within the class of consumptive users identified in (1) above, move the court for the dismissal from the suit of such person or persons, (4) said contract shall be conditional upon the passage and approval of this act but shall terminate if section 61-539 or 61-540 [this section], Idaho Code, be subsequently amended or repealed, and (5) in the event this act be amended or repealed, the defenses of statute of limitations, abandonment, adverse possession, statutory forfeiture, laches [laches], waiver, estoppel and other applicable common law defenses shall not be available against said electrical corporation following said contract termination for a period of two (2) years, unless the parties mutually consent to keep said contract in effect by addendum.

History.

I.C., § 61-540, as added by 1983, ch. 259,
§ 2, p. 689.

STATUTORY NOTES**Compiler's Notes.**

Idaho Power Company v. State, referred to in this section, is reported at 104 Idaho 575, 661 P.2d 741.

The terms "this act" refers to S.L. 1983, ch. 259, which is compiled as §§ 61-539, 61-540.

The bracketed insertions near the end of this section were added by the compiler to clarify a reference and to supply the probable intended term.

Effective Dates.

Section 3 of S.L. 1983, ch. 259 read: "An emergency existing therefor, which emer-

gency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, provided, however, that the provisions of Section 1 of this act shall be in full force and effect only after the signing of the contract provided for in Section 61-540, Idaho Code, by the Governor of the State of Idaho and an appropriate electrical corporation." The contract provided for in S.L. 1983, ch. 259, § 3 was signed on October 25, 1984. See http://www.idwr.idaho.gov/News/Issues/SwanFalls/07_08documents/Agreement.pdf.

61-541. Binding ratemaking treatments applicable when costs of a new electric generation facility are included in rates. — (1) As used in this section, "certificate" means a certificate of convenience and necessity issued under section 61-526, Idaho Code.

(2) A public utility that proposes to construct, lease or purchase an electric generation facility or transmission facility, or make major additions to an electric generation or transmission facility, may file an application with the commission for an order specifying in advance the ratemaking treatments that shall apply when the costs of the proposed facility are included in the public utility's revenue requirements for ratemaking purposes. For purposes of this section, the requested ratemaking treatments may include nontraditional ratemaking treatments or nontraditional cost recovery mechanisms.

(a) In its application for an order under this section, a public utility shall describe the need for the proposed facility, how the public utility addresses the risks associated with the proposed facility, the proposed date of the lease or purchase or commencement of construction, the public utility's proposal for cost recovery, and any proposed ratemaking treatments to be applied to the proposed facility.

(b) For purposes of this section, ratemaking treatments for a proposed facility include but are not limited to:

- (i) The return on common equity investment or method of determining the return on common equity investment;
- (ii) The depreciation life or schedule;
- (iii) The maximum amount of costs that the commission will include in rates at the time determined by the commission without the public utility having the burden of moving forward with additional evidence of the prudence and reasonableness of such costs;
- (iv) The method of handling any variances between cost estimates and actual costs; and
- (v) The treatment of revenues received from wholesale purchasers of service from the proposed facility.

(3) The commission shall hold a public hearing on the application submitted by the public utility under this section. The commission may hold its hearing in conjunction with an application for a certificate.

(4) Based upon the hearing record, the commission shall issue an order that addresses the proposed ratemaking treatments. The commission may accept, deny or modify a proposed ratemaking treatment requested by the utility. In determining the proposed ratemaking treatments, the commission shall maintain a fair, just and reasonable balance of interests between the requesting utility and the utility's ratepayers.

(a) In reviewing the application, the commission shall also determine whether:

(i) The public utility has in effect a commission-accepted integrated resource plan;

(ii) The services and operations resulting from the facility are in the public interest and will not be detrimental to the provision of adequate and reliable electric service;

(iii) The public utility has demonstrated that it has considered other sources for long-term electric supply or transmission;

(iv) The addition of the facility is reasonable when compared to energy efficiency, demand-side management and other feasible alternative sources of supply or transmission; and

(v) The public utility participates in a regional transmission planning process.

(b) The commission shall use its best efforts to issue the order setting forth the applicable ratemaking treatments prior to the date of the proposed lease, acquisition or commencement of construction of the facility.

(c) The ratemaking treatments specified in the order issued under this section shall be binding in any subsequent commission proceedings regarding the proposed facility that is the subject of the order, except as may otherwise be established by law.

(5) The commission may not require a public utility to apply for an order under this section.

(6) The commission may promulgate rules or issue procedural orders for the purpose of administering this section.

History.

I.C., § 61-541, as added by 2009, ch. 145,
§ 1, p. 436.

CHAPTER 6

PROCEDURE BEFORE COMMISSION AND IN COURTS

SECTION.

61-601. Practice — Evidence.

61-602. Process.

61-603. Witnesses — Attendance — Fees —
Mileage.

SECTION.

61-604. Witnesses — District court may com-
pel attendance — Procedure.

61-605. Depositions.

61-606. No privilege to witnesses — Immu-

SECTION.

- nity from self-incriminating testimony.
- 61-607. Certified copies of documents as evidence.
- 61-608. Recording of orders, authorizations and certificates.
- 61-609. Fees.
- 61-610. Right to inspect books and examine employees.
- 61-611. Production of books without state.
- 61-612. Complaint against utility.
- 61-613. Complaint against utility — Joinder.
- 61-614. Complaint against utility — No dismissal.
- 61-615. Complaint against utility — Service of copy of complaint.
- 61-616. Complaint against utility — Time and place of hearing.
- 61-617. Hearing — Process for attendance of witnesses.
- 61-617A. Award of costs of intervention.
- 61-618. Decision — Service of order — Time effective — Extension of time.
- 61-619. Record.
- 61-620. Record on appeal. [Repealed.]
- 61-621. Complaint by utility.
- 61-622. Finding of commission necessary for increase in rate.
- 61-622A. Commission authority — Cost allocation.

SECTION.

- 61-623. Determination of schedule and regular rates.
- 61-624. Rescission or change of orders.
- 61-625. Orders not subject to collateral attack.
- 61-626. Reconsideration — Procedure — Order not stayed — Change of original order.
- 61-627. Appeal to supreme court — Notice of appeal — Matters reviewable on appeal — Extent of review — Record on appeal.
- 61-628. Notice of appeal — Filing and service. [Repealed.]
- 61-629. Matters reviewable on appeal — Extent of review — Judgment.
- 61-630. Right to be heard on appeal.
- 61-631. Costs on appeal — Enforcement.
- 61-632. Procedure on appeals from district court applicable. [Repealed.]
- 61-633. Stay of order — Notice.
- 61-634. Stay of order — Bond.
- 61-635. Stay of order on appeal.
- 61-636. Stay of order on appeal — Notice.
- 61-637. Stay of order on appeal — Bond.
- 61-638. Stay of order on appeal — Accounts pending final decision.
- 61-639. Preference on calendar. [Repealed.]
- 61-640. Hearings to determine valuations.
- 61-641. Overcharge — Reparation.
- 61-642. Overcharge — Recovery of payment.

61-601. Practice — Evidence. — All hearings and investigations before the commission or any commissioner shall be governed by this act and by rules of practice and procedure to be adopted by the commission, and in the conduct thereof neither the commission nor any commissioner shall be bound by the technical rules of evidence.

History.

1913, ch. 61, § 49, p. 247; reen. C.L. 106:110; C.S., § 2478; I.C.A., § 59-601.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

ANALYSIS

Abuse of discretion.
 Authority of commission.
 Certificate of convenience.
 Due process.
 Evidence.
 Liberal rules.
 Rate hearings.

Abuse of Discretion.

Commission did not abuse its discretion by receiving testimony offered by applicants not verifying application for certificate of convenience and necessity nor filing map required by rules. *McFayden v. Public Utils. Consol. Corp.*, 50 Idaho 651, 299 P. 671 (1931).

Authority of Commission.

Commission's authority to determine relevancy and competency of all evidence should be liberally construed. *Federal Mining & Smelting Co. v. Public Utils. Comm'n*, 26 Idaho 391, 143 P. 1173 (1914).

In the absence of any statute specifically authorizing the public utilities commission to compensate consumer intervenors, the commission does not have the authority under either § 61-501 or this section to adopt intervenor funding rules or to award attorney fees and costs in connection with proceedings under the public utility regulatory policies act, 16 U.S.C.S. § 2601. *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 744, 639 P.2d 442 (1981).

The Idaho rules of civil procedure do not apply to hearings before the public utilities commission. *McNeal v. Idaho PUC*, 142 Idaho 685, 132 P.3d 442 (2006), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

Certificate of Convenience.

The legislature has the authority to designate those carriers or utilities which must secure from the public utilities commission a certificate of convenience and necessity before beginning operations. *In re Garrett Transf. & Storage Co.*, 53 Idaho 200, 23 P.2d 739 (1933).

Due Process.

The commission cannot by rule transcend the constitutional requirement of due process. *In re Citizens Utils. Co.*, 82 Idaho 208, 351 P.2d 487 (1960).

Evidence.

Where a commissioner has personal knowledge of facts pertinent to the decision to be reached, or which he intends to consider in reaching a decision, it becomes his duty to place such facts in the record at a hearing where the parties affected thereby are af-

forded full opportunity to test the accuracy or applicability thereof and to counter or refute such evidence. *In re Citizens Utils. Co.*, 82 Idaho 208, 351 P.2d 487 (1960).

The public utility commission is a fact-finding administrative agency and, as such, is not bound by the strict rules of evidence governing courts of law; however, its findings must be supported by substantial and competent evidence, and it cannot make a finding based upon hearsay. *In re Citizens Utils. Co.*, 82 Idaho 208, 351 P.2d 487 (1960).

It is generally held that where the commission intends to consider and rely on facts coming to its knowledge in other cases, such facts must be brought on the record in pending proceedings in such manner that the parties affected thereby will be afforded an opportunity to test the accuracy, applicability, or relevancy of such facts and to refute same, and that findings based on evidence not in the record cannot be sustained. *In re Citizens Utils. Co.*, 82 Idaho 208, 351 P.2d 487 (1960).

Liberal Rules.

Law governing evidence before the commission is based on liberality. *Lewiston Grain Growers, Inc. v. Rooke*, 69 Idaho 374, 207 P.2d 1028 (1949).

Rate Hearings.

Commission erred in hearing on application for raise in warehouse rates on storage of wheat, when it refused to receive evidence of value of wheat, since value of the commodity stored is one of the elements to be considered in fixing value of the storage service to the owner. *Lewiston Grain Growers, Inc. v. Rooke*, 69 Idaho 374, 207 P.2d 1028 (1949).

Commission erred in hearing on increase of warehouse rates, when they refused to receive in evidence rates existing for similar service in that part of state of Washington, adjacent to area in Idaho served by petitioners. *Lewiston Grain Growers, Inc. v. Rooke*, 69 Idaho 374, 207 P.2d 1028 (1949).

Cited in: *In re Arrow Transportation Co.*, 77 Idaho 523, 296 P.2d 459 (1956); *Boise Water Corp. v. Idaho Pub. Utils. Comm'n*, 97 Idaho 832, 555 P.2d 163 (1976); *Idaho Fair Share v. Idaho Pub. Utils. Comm'n*, 113 Idaho 959, 751 P.2d 107 (1988).

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Utilities, § 176 et seq.

61-602. Process. — The commission and each commissioner shall have power to issue writs of summons and subpoenas, warrants of attachment in the like manner and to the same extent as courts of record. The process issued by the commission or any commissioner shall extend to all parts of

the state and may be served by any person authorized to serve process of courts of record or by any person designated for that purpose by the commission or commissioner. The person executing any such process shall receive such compensation as may be allowed by the commission not to exceed the fees prescribed by law for similar services, and such fees shall be paid in the same manner as provided herein for payment of the fees of witnesses.

History.

1913, ch. 61, § 50, p. 247; reen. C.L.
106:111; C.S., § 2479; I.C.A., § 59-602.

STATUTORY NOTES**Cross References.**

Attachment of witnesses, § 9-709.

Sheriff's fees, § 31-3203.

Subpoena, §§ 9-706, 9-708 to 9-713.

JUDICIAL DECISIONS

Cited in: *Lewiston Grain Growers, Inc. v. Kent v. Idaho Pub. Utils. Comm'n*, 93 Idaho
Rooke, 69 Idaho 374, 207 P.2d 1028 (1949); 618, 469 P.2d 745 (1970).

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Utilities,
§ 214.

61-603. Witnesses — Attendance — Fees — Mileage. — The commission and each commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state.

Each witness who shall appear, by order of the commission or a commissioner, shall receive for his attendance the same fees allowed by law to a witness in civil cases, in the district court, and mileage at ten cents (10¢) for every mile of travel one (1) way by the nearest generally traveled route in going to the place where the attendance of a witness is required, which amount shall be paid by the party at whose request such witness was subpoenaed.

When any witness who has not been required to attend at the request of any party shall be subpoenaed by the commission, his fees and mileage shall be paid from the funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid: provided, that the commission may at its discretion refuse to allow the mileage and attendance of any witness subpoenaed before it that is in the employ of any public utility defined in this act.

Any witness subpoenaed except one whose fees and mileage may be paid from the funds of the commission, may at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear and one (1) day's attendance. If such witness demands

such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the commission or commissioner, as directed in the subpoena, unless the commission shall by order indorsed on the subpoena require any such witness to attend, irrespective of the fact that such mileage and attendance are not paid on demand. All fees or mileage to which any witness is entitled under the provisions of this section may be collected by action therefor instituted by the person to whom such fees are payable. No witness furnished with free transportation shall receive mileage for the distance he may travel on such free transportation.

History.

1913, ch. 61, § 51a, p. 247; reen. C.L. 106:112; C.S., § 2480; I.C.A., § 59-603.

STATUTORY NOTES

Cross References.

Witness fees in district court, § 9-1601.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to

61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

Production of Documents.

Commission has authority to require production of documents necessary as evidence in cases before commission and to grant litigants time and place sufficient for their examination. *Federal Mining & Smelting Co. v. Public Utils. Comm'n*, 26 Idaho 391, 143 P. 1173 (1914).

Cited in: *Lewiston Grain Growers, Inc. v. Rooke*, 69 Idaho 374, 207 P.2d 1028 (1949); *Kent v. Idaho Pub. Utils. Comm'n*, 93 Idaho 618, 469 P.2d 745 (1970).

61-604. Witnesses — District court may compel attendance — Procedure. — The district court in and for the county, or city and county in which any inquiry, investigation, hearing or proceeding may be held by commission or any commissioner shall have the power to compel the attendance of witnesses, the giving of testimony and the production of papers, including waybills, books, accounts and documents as required by any subpoena issued by the commission or any commissioner.

The commission or the commissioner before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the district court in and for the county, or city and county, in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers required by the subpoena, before the commission or commissioner, in the cause or proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceeding, and

ask an order of said court compelling the witness to attend and testify or produce said papers before the commission.

The court, upon the petition of the commission or such commissioner, shall enter an order directing the witnesses to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten (10) days from the date of the order, and then and there show cause why he has not attended and testified or produced said papers before the commission. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission or a commissioner and regularly served, the court shall thereupon enter an order that said witness appear before the commission or said commissioner at the time and place fixed in said order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court.

The remedy provided in this section is cumulative and shall not be construed to impair or interfere with the power of the commission or a commissioner to enforce the attendance of witnesses and the production of papers, and to punish for contempt in the same manner and to the same extent as [a] court of record.

History.

1913, ch. 61, § 51b, p. 247; compiled and

reen. C.L. 106:113; C.S., § 2481; I.C.A., § 59-604.

STATUTORY NOTES

Cross References.

Contempts, § 7-601 et seq.

Compiler's Notes.

The bracketed word "a" in the last paragraph was inserted by the compiler.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121,

61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-605. Depositions. — The commission or any commissioner or any party may in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the district courts of this state and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers and accounts.

History.

1913, ch. 61, § 51c, p. 247; reen. C.L. 106:114; C.S., § 2482; I.C.A., § 59-605.

JUDICIAL DECISIONS

Cited in: Kent v. Idaho Pub. Utils. Comm'n, 93 Idaho 618, 469 P.2d 745 (1970).

61-606. No privilege to witnesses — Immunity from self-incriminating testimony. — No person shall be excused from testifying or from

producing any book, waybill, document, paper or account in any investigation or inquiry by or hearing before the commission or any commissioner, when ordered to do so, upon the ground that the testimony or evidence, book, waybill, document, paper or account, required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished or subjected to any forfeiture or penalty for or on account of any act, transaction, matter or thing concerning which he shall, under oath have testified or produced documentary evidence: provided, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. Nothing herein contained shall be construed as in any manner giving to any public utility immunity of any kind.

History.

1913, ch. 61, § 51d, p. 247; reen. C.L.
106:115; C.S., § 2483; I.C.A., § 59-606.

61-607. Certified copies of documents as evidence. — Copies of official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the secretary under the official seal of the commission to be true copies of the original shall be evidence in like manner as the originals.

History.

1913, ch. 61, § 52a, p. 247; reen. C.L.
106:116; C.S., § 2484; I.C.A., § 59-607.

STATUTORY NOTES

Cross References.

Seal of commission, § 61-209.

61-608. Recording of orders, authorizations and certificates. — Every order, authorization or certificate issued or approved by the commission under any provision of sections 61-510 to 61-514, and 61-526 to 61-529, Idaho Code, shall be in writing and entered on the records of the commission.

Any such order, authorization or certificate, or a copy thereof, or a copy of the record of any such order, authorization or certificate, certified by a commissioner or by the secretary or assistant secretary under the official seal of the commission to be a true copy of the original order, authorization, certificate or entry, may be recorded in the office of the recorder of any county or city and county, in which is located the principal place of business of any public utility affected thereby, or in which is situated any property of any such public utility, and such record shall impart notice of its provisions to all persons. A certificate under the seal of the commission that any such order, authorization or certificate has not been modified, stayed, suspended or revoked may also be recorded in the same offices in the same manner and with like effect.

History.

1913, ch. 61, § 52b, p. 247; reen. C.L.

106:117; C.S., § 2485; I.C.A., § 59-608; am.

1979, ch. 218, § 3, p. 603.

RESEARCH REFERENCES**Am. Jur.** — 64 Am. Jur. 2d, Public Utilities, §§ 181, 182.**C.J.S.** — 73B C.J.S., Public Utilities, §§ 224 to 239.

61-609. Fees. — The commission shall charge and collect reasonable fees for copies of papers and records as established by rule or general order of the commission.

No fees shall be charged or collected for copies of papers, records or official documents, furnished to the public officers for use in their official capacity, or for the annual reports of the commission in the ordinary course of distribution, but the commission may fix reasonable charges for publications issued under its authority.

All fees charged or collected under this section shall be paid at least once each week, accompanied by a detailed statement thereof, into the treasury of the state of Idaho to the public utilities commission account [fund].

History.

1913, ch. 61, § 53, p. 247; reen. C.L. 106:118; C.S., § 2486; I.C.A., § 59-609; am.

1967, ch. 3, § 1, p. 6; am. 1984, ch. 109, § 1, p. 252.

STATUTORY NOTES**Compiler's Notes.**

The bracketed insertion at the end of this section was added by the compiler to correct the name of the referenced fund. See § 61-1008.

Effective Dates.

Section 2 of S.L. 1967, ch. 3 declared an emergency. Approved January 31, 1967.

61-610. Right to inspect books and examine employees. — (1) The commission, each commissioner and each person employed by the commission shall have the right at any and all reasonable times to inspect the accounts, books, papers and documents of any public utility. The commission shall also have the right to inspect the records of a public utility's holding company, parent, affiliate, or subsidiary that engages directly in any transaction with the regulated utility which results in expenses being incurred, allocated or otherwise attributed to regulated services of a public utility; provided however, the commission may inspect only those records which are necessary to determine whether such expense was properly incurred and should be included, in whole or in part, in the public utility's rates.

(2) The commission, each commissioner and any employee authorized to administer oaths shall have power to examine under oath any officer, agent or employee of such public utility in relation to the business and affairs of said public utility: provided, that any person other than a commissioner demanding such inspection shall produce under the seal of the commission his authority to make such inspection. A written record of the testimony or statement so given under oath shall be made and filed with the commission.

History.

1913, ch. 61, § 54, p. 247; reen. C.L. 106:119; C.S., § 2487; I.C.A., § 59-610; am. 2001, ch. 385, § 1, p. 1347.

JUDICIAL DECISIONS**ANALYSIS**

Application.
Construction.
Right of inspection.
Showing required.

Application.

This section applies equally to utilities whose records are kept within and without state. *Federal Mining & Smelting Co. v. Public Utils. Comm'n*, 26 Idaho 391, 143 P. 1173 (1914).

Construction.

This section refers to persons authorized to inspect records of a utility and does not refer to production of books or records required to be produced as evidence on the trial. *Federal Mining & Smelting Co. v. Public Utils. Comm'n*, 26 Idaho 391, 143 P. 1173 (1914).

Right of Inspection.

Corporation's accounts should be subject to

reasonable inspection of consumer in matter affecting his relation to utility. *Federal Mining & Smelting Co. v. Public Utils. Comm'n*, 26 Idaho 391, 143 P. 1173 (1914).

Showing Required.

Parties litigant who desire to inspect records of opposing parties must make showing as to necessity and must specify the particular books and papers which they desire to examine. *Federal Mining & Smelting Co. v. Public Utils. Comm'n*, 26 Idaho 391, 143 P. 1173 (1914).

Cited in: *Lewiston Grain Growers, Inc. v. Rooke*, 69 Idaho 374, 207 P.2d 1028 (1949).

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Utilities, §§ 177, 178.

61-611. Production of books without state. — The commission may require, by order served on any public utility in the manner provided herein for the service of orders, the production within this state at such time and place as it may designate, of any books, accounts, papers or records kept by said public utility in any office or place without this state, or, at its option, verified copies in lieu thereof so that an examination thereof may be made by the commission or under its direction.

History.

1913, ch. 61, § 55, p. 247; compiled and reen. C.L. 106:120; C.S., § 2488; I.C.A., § 59-611.

JUDICIAL DECISIONS**Limitations as to Inspection.**

Records of corporations kept without the state are subject to same limitations as in-

spection within the state. *Federal Mining & Smelting Co. v. Public Utils. Comm'n*, 26 Idaho 391, 143 P. 1173 (1914).

61-612. Complaint against utility. — Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public utility

including any rule, regulation or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation of any provision of law or of any order or rule of the commission: provided, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rate or charges of any gas, electrical, water or telephone corporation, unless the same be signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission or other legislative body of the city or county or city or town, if any, within which the alleged violation occurred, or not less than 25 consumers or purchasers or prospective consumers or purchasers of such gas, electricity, water or telephone service.

History.

1913, ch. 61, first part of § 56, p. 247; reen.
C.L. 106:121; C.S., § 2489; I.C.A., § 59-612.

JUDICIAL DECISIONS

ANALYSIS

Jurisdiction of commission.

Production of books and papers.

Jurisdiction of Commission.

Complaint by electrical nonprofit cooperatives for alleged encroachment of their territory by defendant public utility could not be entertained on the ground that public utility had violated the law or some order of the commission and that the public utility had not secured a certificate of public convenience in extending their lines, since such cooperatives were not public utilities and the public utilities commission was only authorized to hear matters where public utilities were injuriously affected. *Clearwater Power Co. v. Washington Power Co.*, 78 Idaho 150, 299 P.2d 484 (1956).

The Idaho public utilities commission (IPUC) has the authority and the jurisdiction to engage in a case-by-case analysis under applicable statutory law for the standards and requirements pursuant to implementation of the public utility regulatory policies act (16 U.S.C.S. § 2601 et seq.): thus, all case decisions issued by the IPUC are potentially applicable to, and may have an impact on, a qualifying facility's project. *Rosebud Enters.*,

Inc. v. Idaho Public Utils. Comm'n, 128 Idaho 609, 917 P.2d 766 (1996).

Production of Books and Papers.

The public utilities commission has full power and authority to cause to be produced the accounts, books, papers and documents of any public utility doing business within the state. *Federal Mining & Smelting Co. v. Public Utils. Comm'n*, 26 Idaho 391, 143 P. 1173 (1914).

Cited in: *Neil v. Public Utils. Comm'n*, 32 Idaho 44, 178 P. 271 (1919); *State v. Kouni*, 58 Idaho 493, 76 P.2d 917 (1938); *Idaho Mut. Benefit Ass'n v. Robison*, 65 Idaho 793, 154 P.2d 156 (1944); *Washington Water Power Co. v. Kootenai Envtl. Alliance*, 99 Idaho 875, 591 P.2d 122 (1979); *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 597 P.2d 1058 (1979); *Afton Energy, Inc. v. Idaho Power Co.*, 107 Idaho 781, 693 P.2d 427 (1984); *Empire Lumber Co. v. Washington Water Power Co.*, 114 Idaho 191, 755 P.2d 1229 (1988).

RESEARCH REFERENCES

A.L.R. — Representation of another before state public utilities or service commission as involving practice of law. 13 A.L.R.3d 812.

61-613. Complaint against utility — Joinder. — All matters upon which complaint may be founded may be joined in one (1) hearing, no motion shall be entertained against a complaint for misjoinder of causes of action or

grievances or misjoinder or nonjoinder of parties; and in any review by the courts of orders or decisions of the commission the same rule shall apply with regard to the joinder of causes and parties as herein provided.

History.

1913, ch. 61, part of § 56, p. 247; reen. C.L. 106:122; C.S., § 2490; I.C.A., § 59-613.

61-614. Complaint against utility — No dismissal. — The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant.

History.

1913, ch. 61, part of § 56, p. 247; reen. C.L. 106:123; C.S., § 2491; I.C.A., § 59-614.

61-615. Complaint against utility — Service of copy of complaint. — Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the corporation, or person complained of. Service in all hearings, investigation and proceedings pending before the commission may be made upon any person upon whom a summons may be served in accordance with the provisions of the Code of Civil Procedure of this state, and may be made personally or by mailing in a sealed envelope, registered, with postage prepaid.

History.

1913, ch. 61, part of § 56, p. 247; compiled and reen. C.L. 106:124; C.S., § 2492; I.C.A., § 59-615.

STATUTORY NOTES

Compiler's Notes.

The code of civil procedure, referred to in this section, is a division of the Idaho Code, consisting of Titles 1 through 13.

61-616. Complaint against utility — Time and place of hearing. — The commission shall fix the time when and place where a hearing will be had upon the complaint and shall serve notice thereof, not less than twenty (20) days before the time set for such hearing, unless the commission shall find that public necessity requires that such hearing be held at an earlier date.

History.

1913, ch. 61, last part of § 56, p. 247; reen. C.L. 106:125; C.S., § 2493; I.C.A., § 59-616.

61-617. Hearing — Process for attendance of witnesses. — At the time fixed for any hearing before the commission or a commissioner, or the time to which the same may have been continued, the complainant and the corporation or person complained of, and such corporations or persons as the commission may allow to intervene, shall be entitled to be heard and to introduce evidence. The commission shall issue process to enforce the attendance of all necessary witnesses.

History. reen. C.L. 106:126; C.S., § 2494; I.C.A., § 59-1913, ch. 61, first part of § 57a, p. 247; 617.

JUDICIAL DECISIONS

Cited in: Neil v. Public Utils. Comm’n, 32 Idaho 44, 178 P. 271 (1919).

61-617A. Award of costs of intervention. — (1) It is hereby declared the policy of this state to encourage participation at all stages of all proceedings before the commission so that all affected customers receive full and fair representation in those proceedings.

(2) The commission may order any regulated electric, gas, water or telephone utility with gross Idaho intrastate annual revenues exceeding three million five hundred thousand dollars (\$3,500,000) to pay all or a portion of the costs of one (1) or more parties for legal fees, witness fees, and reproduction costs, not to exceed a total for all intervening parties combined of forty thousand dollars (\$40,000) in any proceeding before the commission. The determination of the commission with regard to the payment of these expenses shall be based on the following considerations:

- (a) A finding that the participation of the intervenor has materially contributed to the decision rendered by the commission; and
- (b) A finding that the costs of intervention are reasonable in amount and would be a significant financial hardship for the intervenor; and
- (c) The recommendation made by the intervenor differed materially from the testimony and exhibits of the commission staff; and
- (d) The testimony and participation of the intervenor addressed issues of concern to the general body of users or consumers.

(3) Expenses awarded to qualifying intervenors shall be an allowable business expense in the pending rate case or, if the proceeding is not a rate case, in the utility’s next rate case. Expenses awarded shall be chargeable to the class of customers represented by the qualifying intervenors.

(4) The commission may adopt rules for the implementation of this statute.

(5) The payment of expenses of intervenors who are in direct competition with a public utility involved in proceedings before the commission is prohibited.

History. § 1, p. 309; am. 1993, ch. 234, § 1, p. 816; am. I.C., § 61-617A, as added by 1985, ch. 126, 2003, ch. 41, § 1, p. 162.

STATUTORY NOTES

Effective Dates. Section 2 of S.L. 1993, ch. 234 declared an emergency. Approved March 26, 1993.

JUDICIAL DECISIONS

ANALYSIS

Abuse of discretion.
Retroactive effect.

Scope of review.

Abuse of Discretion.

The public utility commission abused its discretion in refusing to compensate the intervenor for the hours of the expert witness and attorney for producing evidence that was stricken from the record and a settlement agreement that was not relevant to the resolution of the case. *Idaho Fair Share v. Idaho Pub. Utils. Comm'n*, 113 Idaho 959, 751 P.2d 107 (1988).

Because the factors in paragraphs (a) through (d) in subsection (2) are connected by the word "and," the commission must find that all four listed factors exist in order to award expenses under this section. Thus, where the commission finds that an intervenor's participation did not materially contribute to the commission's decision, there is no showing that the commission abused its dis-

cretion in denying the requested intervenor's expenses. *Bldg. Contrs. Ass'n v. Idaho PUC*, 151 Idaho 10, 253 P.3d 684 (2011).

Retroactive Effect.

The public utility commission erred by failing to consider any of the intervenor's legal fees and costs incurred prior to the effective date of this section, where the proceeding was pending before the commission when the intervenor compensation statute took effect. *Idaho Fair Share v. Idaho Pub. Utils. Comm'n*, 113 Idaho 959, 751 P.2d 107 (1988).

Scope of Review.

The supreme court applied the standard of free review to the public utility commission's interpretation of this section. *Idaho Fair Share v. Idaho Pub. Utils. Comm'n*, 113 Idaho 959, 751 P.2d 107 (1988).

61-618. Decision — Service of order — Time effective — Extension of time. — After the conclusion of the hearing, the commission shall make and file its order, containing its decision. A copy of such order, certified under the seal of the commission, shall be served upon the corporation or person complained of, or its or his attorney. Said order shall, of its own force, take effect and become operative twenty (20) days after the service thereof, except as otherwise provided, and shall continue in force, either for a period which may be designated therein or until changed or abrogated by the commission. If an order cannot, in the judgment of the commission, be complied with within twenty (20) days, the commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order.

History.

1913, ch. 61, part of § 57a, p. 247; reen. C.L. 106:127; C.S., § 2495; I.C.A., § 59-618.

JUDICIAL DECISIONS

Cited in: *Neil v. Public Utils. Comm'n*, 32 Idaho 44, 178 P. 271 (1919); *Capital Water Co. v. Public Utils. Comm'n*, 41 Idaho 19, 237 P. 423 (1925).

61-619. Record. — A full and complete record of all proceedings had before the commission or any commissioner on any formal hearing had, and all testimony shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney.

History.

1913, ch. 61, part of § 57a, p. 247; reen. C.L. 106:128; C.S., § 2496; I.C.A., § 59-619.

61-620. Record on appeal. [Repealed.]**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1913, ch. 61, last part of § 57a, p. 247; reen. C.L. 106:129;

C.S., § 2497; am. 1921, ch. 72, § 6, p. 141; am. 1925, ch. 88, § 1, p. 123; I.C.A., § 59-620, was repealed by S.L. 1977, ch. 299, § 1.

61-621. Complaint by utility. — Any public utility shall have a right to complain on any of the grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases, except that the complaint may be heard *ex parte* by the commission or may be served upon any parties designated by the commission.

History.

1913, ch. 61, § 58, p. 247; reen. C.L. 106:130; C.S., § 2498; I.C.A., § 59-621.

JUDICIAL DECISIONS

Cited in: Joy v. Winstead, 70 Idaho 232, 215 P.2d 291 (1950).

61-622. Finding of commission necessary for increase in rate. — No public utility shall raise any rate, fare, toll, rental or charge or so alter any classification, contract, practice, rule or regulation as to result in an increase in any rate, fare, toll, rental or charge, under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified. The commission shall have power, and is hereby given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation, and pending the hearing and decision thereon, such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation shall not go into effect; provided, that the period of suspension of such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation shall not extend beyond thirty (30) days when such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation would otherwise go into effect, pursuant to section 61-307, Idaho Code, unless the commission in its discretion extends the period of suspension for an initial period not exceeding five (5) months, nor unless the commission after a showing of good cause on the record grants an additional sixty (60) days; provided further, that prior to the expiration of said periods of suspension the commission may, with the consent in writing signed by the party filing such schedule, permanently or further suspend the same. On such hearing, the commission shall establish the rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable.

History.

1913, ch. 61, § 59a, p. 247; reen. C.L. § 106:131; C.S., § 2499; I.C.A., § 59-622; am.

1975, ch. 81, § 1, p. 166; am. 1976, ch. 263, § 1, p. 887.

STATUTORY NOTES**Cross References.**

Common carriers, establishment of joint rate, § 61-504.

Common carriers, schedule of rates and charges, §§ 61-304, 61-306, 61-308 to 61-310.

Power to raise, lower, change and fix rates, § 61-502.

Effective Dates.

Section 2 of S.L. 1975, ch. 81 declared an emergency. Approved March 21, 1975.

Section 2 of S. L. 1976, ch. 263, declared an emergency. Approved March 31, 1976.

JUDICIAL DECISIONS**ANALYSIS**

Abbreviated proceedings.

Additional period of suspension.

Amortization period.

Burden of proof.

Discretion of commission.

Effective date of increase.

Hearings and findings.

Increase in rates.

Interpretation.

Invalid revenue model.

Jurisdiction.

Municipal utilities.

Recovery of past losses.

Rejections without a hearing.

Returns and dismissals.

Test-year data.

Abbreviated Proceedings.

An accelerated rate of recovery of company's demand side management program expenditures, programs designed to help reduce energy consumption, would not increase the company's authorized rate of return; therefore, the public utilities commission was pursuing its statutory authority when it adopted abbreviated proceedings to account for this single item expense of the company. *Industrial Customers of Idaho Power v. Idaho Pub. Utils. Comm'n*, 134 Idaho 285, 1 P.3d 786 (2000).

Additional Period of Suspension.

The words "a showing of good cause on the record" can be read to mean only that the record in the case must disclose that the additional days are necessary, as opposed to allowing the commission to act with absolute discretion. *Washington Water Power Co. v. Idaho Pub. Utils. Comm'n*, 101 Idaho 567, 617 P.2d 1242 (1980).

Where the commission determined from the record that good cause existed to suspend the rates for the additional 60 days because of the size of the increase requested, the complexity of the cases presented by the electric utility

and the workload of the commission at that time, and where no challenge had been made to these findings, the commission acted properly. *Washington Water Power Co. v. Idaho Pub. Utils. Comm'n*, 101 Idaho 567, 617 P.2d 1242 (1980).

Amortization Period.

When faced with competent testimony on the reasonableness of five, seven, and twenty-four year amortization periods, the public utilities commission could, relying upon the testimony presented in addition to its own expertise, reasonably determine that a twelve-year amortization period was adequate and reasonable. *Industrial Customers of Idaho Power v. Idaho Pub. Utils. Comm'n*, 134 Idaho 285, 1 P.3d 786 (2000).

Burden of Proof.

Burden was on telephone company in proceeding before public utilities commission by other such companies to reduce former company's rate for exchange service on ground that increased rate was never legally inaugurated to establish increase over previous contract rate. *Mountain View Rural Tel. Co. v. Interstate Tel. Co.*, 55 Idaho 514, 46 P.2d 723 (1935).

Discretion of Commission.

Questions of cost of equity and rate of return are matters which raise extremely complicated issues, and deciding these questions is a function of the Idaho public utilities commission and these questions are within the commission's area of expertise. Similarly, the adoption of a standard for determining the reasonableness of payments to an affiliate raises many complex issues which are best left for the commission to deal with initially. *Washington Water Power Co. v. Idaho Pub. Utils. Comm'n*, 101 Idaho 567, 617 P.2d 1242 (1980).

Effective Date of Increase.

Increased rate, promulgated by telephone company for exchange service rendered to other telephone companies without showing before, or finding by public utilities commission that increase was justified, was held not legally in effect. *Mountain View Rural Tel. Co. v. Interstate Tel. Co.*, 55 Idaho 514, 46 P.2d 723 (1935).

If the commission fails to reach a decision concerning the propriety of a requested increase at the expiration of the seven-month suspension period, the requested increase must go into effect. *Citizens Utils. Co. v. Idaho Pub. Utils. Comm'n*, 99 Idaho 164, 579 P.2d 110 (1978).

Hearings and Findings.

This section contemplates a hearing before the commission and findings by the commission. *Idaho Underground Water Users Ass'n. v. Idaho Power Co.*, 89 Idaho 147, 404 P.2d 859 (1965).

The public utilities commission cannot arrogate the terms of a contract in order to create uniform rates unless it first examines all relevant factors of service to comparable customers and expressly finds that a continuation of the rate specified in the contract would be adverse to the public interest. *Bunker Hill Co. v. Washington Water Power Co.*, 98 Idaho 249, 561 P.2d 391 (1977).

Increase in Rates.

The commission had authority to fix utility rates which would supersede rates previously fixed by private contract, but before the commission could increase electric service rates charged to an industrial customer under a special service contract it was required to find specifically that the different rate was unreasonable and adverse to the public interest. *Agricultural Prods. Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 557 P.2d 617 (1976).

The fact that a requested rate increase must go into effect at the expiration of the seven-month period does not in any way conclude the commission's inquiry into the propriety of the rate increase or in any way limit the commission's authority and duties. *Citi-*

zens Utils. Co. v. Idaho Pub. Utils. Comm'n, 99 Idaho 164, 579 P.2d 110 (1978).

Interpretation.

The authority to indiscriminately set aside contracts cannot be implied from the provisions delegating rate-making authority to the public utilities commission. *United States v. Utah Power & Light Co.*, 98 Idaho 665, 570 P.2d 1353 (1977).

Invalid Revenue Model.

The adoption of a model which overestimates thermal resources by ten percent, resulting in reduced revenue requirements for the utility, is confiscatory and, hence, must be set aside. *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 108 Idaho 943, 703 P.2d 707 (1985).

Jurisdiction.

Implicit in § 61-129 and the rate-making sections is the idea that the operative factor for jurisdictional purposes is the receipt of services, and any party who receives services from a public utility is subject to public utility regulations and control. *United States v. Utah Power & Light Co.*, 98 Idaho 665, 570 P.2d 1353 (1977).

Inasmuch as this section contained no time limit until amended in 1975, the jurisdiction of the commission was not limited to any specified time period where a power company's application seeking an increase in electrical rates was originally filed with the commission on December 17, 1973. *Grindstone Butte Mut. Canal Co. v. Idaho Power Co.*, 98 Idaho 860, 574 P.2d 902 (1978).

Municipal Utilities.

The rate-fixing statutes applicable to individuals and private corporations exclude municipally owned utilities from their operation. *Snake River Homebuilders Ass'n v. City of Caldwell*, 101 Idaho 47, 607 P.2d 1321 (1980).

Recovery of Past Losses.

The Idaho public utilities commission (PUC) does not have the authority to grant a public utility a surcharge to recover past losses caused by an invalid PUC order set aside by the supreme court on appeal. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 685 P.2d 276 (1984).

Rejections without a Hearing.

The commission has authority to reject a rate increase application without a hearing only where the application is patently deficient in form or invalid as a matter of law, and where the authority is invoked pursuant to explicit authorization by statute or administrative rule. *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 98 Idaho 718, 571 P.2d 1119 (1977).

Where a general rate increase application incorporated revenue figures resulting from a

proposed rate increase due to a specific project with revenue figures used for the general rate increase and where no administrative rule provided that a defective application might be dismissed rather than merely returned, the application was not patently deficient and the commission was not expressly authorized by statute or administrative rule to reject such application. *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 98 Idaho 718, 571 P.2d 1119 (1977).

Returns and Dismissals.

While an application may be either "dismissed" or "returned" by the commission prior to issuance of a suspension order, it may only be "returned" after the issuance of such an order, since a "return" merely tolls the statutory time limits under this section while a "dismissal" starts the whole application process anew and could, therefore, be used to

avoid the statutory requirement entirely. *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 98 Idaho 718, 571 P.2d 1119 (1977).

Test-Year Data.

Order issued by the commission granting increase in electric service rates based upon adjusted test year was not unjust or unreasonable, where it was shown by the applicant utility that use of historical data would have inadequately demonstrated real revenue needs and where the future-year projections were shown to be reasonably reliable and certain. *Agricultural Prods. Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 557 P.2d 617 (1976).

Cited in: *In re Pacific Tel. & Tel. Co.*, 71 Idaho 476, 233 P.2d 1024 (1951); *Tappen v. State, Dep't of Health & Welfare*, 102 Idaho 807, 641 P.2d 994 (1982).

61-622A. Commission authority — Cost allocation. — For any telephone corporation which provides telecommunication services pursuant to both title 61, Idaho Code, and title 62, Idaho Code, the commission may, or at the request of a telephone corporation shall, establish procedures for allocation of costs between telecommunication services provided pursuant to title 61, Idaho Code, and telecommunication services provided pursuant to title 62, Idaho Code. Such allocations shall reasonably reflect how joint-use facilities are utilized, provide reasonable stability for telephone corporations to do business planning and pricing and minimize the cost of accounting and record keeping to the extent possible. In developing such allocation methods, the commission may adopt procedures which are based on gross allocation factors derived from relative changes in total intrastate telecommunication service revenues or expenses or other measures of relative change between the provision of telecommunication services subject to title 61, Idaho Code, and telecommunication services subject to title 62, Idaho Code. The commission shall have authority to establish just and reasonable rates for all telecommunication services which remain subject to title 61, Idaho Code, and for basic local service in accordance with the provisions of chapter 6, title 62, Idaho Code.

History.

I.C., § 61-622A, as added by 1988, ch. 195, § 3, p. 358; am. 1997, ch. 192, § 1, p. 539.

STATUTORY NOTES

Compiler's Notes.

Section 4 of S.L. 1988, ch. 195 read: "On or before January 1, 1991, the commission shall report to the legislature on the effect of this

act on telecommunication services within the state of Idaho, together with the commission's recommendations for changes in the law, if any."

61-623. Determination of schedule and regular rates. — Whenever there shall be filed with the commission any schedule stating an individual or joint rate, fare, toll, rental, charge, classification, contract, practice, rule

or regulation increasing or resulting in the increase of any rate, fare, toll, rental, or charge, the commission shall have power, and is hereby given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation, and pending the hearing and decision thereon, such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation shall not go into effect: provided, that the period of suspension of such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation shall not extend beyond 120 days beyond the time when such rate, fare, toll, rental, charge, classification, contract, practice, rule or regulation would otherwise go into effect unless the commission in its discretion, extends the period of suspension for a further period not exceeding six (6) months: provided further, that prior to the expiration of said periods of suspension the commission may, with the consent in writing signed by the party filing such schedule, permanently or further suspend the same. On such hearing the commission shall establish the rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part or others in lieu thereof, which it shall find to be just and reasonable. All such rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules or regulations, not so suspended shall, on the expiration of thirty (30) days from the time of filing the same with the commission, or of such lesser time as the commission may grant, go into effect and be established and effective rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules and regulations, subject to the power of the commission after a hearing had on its own motion or upon complaint, as herein provided to alter or modify the same.

History. 106:132; C.S., § 2500; am. 1927, ch. 184, § 1, 1913, ch. 61, § 59b, p. 247; reen. C.L. p. 247; I.C.A., § 59-623.

STATUTORY NOTES

Effective Dates.
Section 2 of S.L. 1927, ch. 184 declared an emergency.

JUDICIAL DECISIONS

ANALYSIS

Burden of proof.
“Not” read into law.
Rates.
Special service contracts.

Burden of Proof.
Burden was on telephone company in proceeding before public utilities commission by other such companies to reduce former company’s rate for exchange service on ground that increased rate was never legally inaugurated to establish increase over previous contract rate. *Mountain View Rural Tel. Co. v. Interstate Tel. Co.*, 55 Idaho 514, 46 P.2d 723 (1935).

"Not" Read into Law.

Word "not" should be read into this section authorizing public utilities commission to conduct hearing concerning propriety of public utility's rate on filing of schedule stating rate, rule or regulation increasing or resulting in increase of any rate, before words "increasing or resulting in the," in order to harmonize it with § 61-622, prohibiting public utility from raising rate without showing before and finding by, commission that increase is justified. *Mountain View Rural Tel. Co. v. Interstate Tel. Co.*, 55 Idaho 514, 46 P.2d 723 (1935).

Rates.

This section is applicable to the setting of new rates, while § 61-622 governs increases in rates previously set by the commission. *Grindstone Butte Mut. Canal Co. v. Idaho Power Co.*, 98 Idaho 860, 574 P.2d 902 (1978).

Special Service Contracts.

The commission had authority to fix utility rates which would supersede rates previously fixed by private contract, but before the commission could increase electric service rates charged to an industrial customer under a special service contract it was required to find specifically that the different rate was unreasonable and adverse to the public interest. *Agricultural Prods. Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 557 P.2d 617 (1976).

Cited in: *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 97 Idaho 113, 540 P.2d 775 (1975); *Bunker Hill Co. v. Washington Water Power Co.*, 98 Idaho 249, 561 P.2d 391 (1977); *FMC Corp. v. Idaho Pub. Utils. Comm'n*, 104 Idaho 265, 658 P.2d 936 (1983); *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 685 P.2d 276 (1984).

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Utilities, §§ 26 to 32, 136 to 138.

61-624. Rescission or change of orders. — The commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions.

History.

1913, ch. 61, § 60, p. 247; reen. C.L. 106:133; C.S., § 2501; I.C.A., § 59-624.

JUDICIAL DECISIONS**ANALYSIS**

Appeals.

Constitutionality.

Further proceedings.

Hearing on second application.

Presumption of correctness.

Public use.

Rescission.

Unserved area within certified area.

Appeals.

It is not reasonable to assume, nor does reasonable practice contemplate, an appeal from each separate ruling of the commission on the introduction or exclusion of evidence, when, at the end of all such evidence and the hearing completed, it must make its findings of facts and render a decision. Such final decision is appealable. *Capital Water Co. v.*

Public Utils. Comm'n, 41 Idaho 19, 237 P. 423 (1925).

Constitutionality.

When an intangible property right such as a certificate, franchise, permit or contract is modified or revoked according to its terms, no taking of the property has occurred. Thus, the property right within the telephone provider's

certificate of convenience and necessity was accepted subject to statutory conditions, which included the public utilities commission's authority to modify the certificate by revoking the right to a portion of unserved area when the showing was made that the public convenience and necessity did not require the telephone provider's extension of service to the area. *Cambridge Tel. Co. v. Pine Tel. Sys.*, 109 Idaho 875, 712 P.2d 576 (1985).

Further Proceedings.

Where a commission order reduced the working capital allowance of a gas utility by an amount equal to one half of the franchise taxes annually collected by the utility, the gas utility had a right to request further proceedings to introduce evidence that such an adjustment to working capital may have caused the utility's test year data to be inaccurate. *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 97 Idaho 113, 540 P.2d 775 (1975).

Where the exclusion of purchased gas costs from working capital did not result in an unjust and unreasonable return to a gas utility, the commission was not required to allow the gas utility to include purchased gas costs in its working capital allowance, though the utility could initiate new proceedings to introduce the results of a lead-lag study which the commission would take into consideration in determining the working capital allowance. *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 97 Idaho 113, 540 P.2d 775 (1975).

Where the public utility commission order, which required the water utility to begin booking its connection fees as contributions rather than as revenues, failed to specify whether or not those fees collected that year prior to the date of the order should be so booked, the supreme court set aside the decision of the commission without holding that it was either valid or invalid and remanded the decision to the agency for further determinations pursuant to this section on the question of the effective date of the pertinent part of the order. *Hayden Pines Water Co. v. Idaho Pub. Utils. Comm'n*, 111 Idaho 331, 723 P.2d 875 (1986).

Hearing on Second Application.

Housemover's second application for a motor contract carrier permit and the hearing thereon did not constitute a collateral attack on the commission's previous order denying him a permit, where testimony of some witnesses was not available to housemover at the time of the initial proceeding. *Associated Pac. Movers v. Rowley*, 97 Idaho 663, 551 P.2d 618 (1976).

The authorization for subsequent rescission or modification of an order or decision, pro-

vided for in this section, implies the authority of the commission to grant a hearing on a new application for a permit denied in a previous order. *Associated Pac. Movers v. Rowley*, 97 Idaho 663, 551 P.2d 618 (1976).

Presumption of Correctness.

The findings of facts made by the public utilities commission are presumptively correct. Such presumption is only *prima facie* and may be rebutted, and the burden is upon the one attacking the commission's action to show its incorrectness. *Nez Perce Roller Mills v. Public Utils. Comm'n*, 54 Idaho 696, 34 P.2d 972 (1934).

Public Use.

The use to which the appellant and his predecessors have applied that portion of the hot water over and above what is required for the natatorium is a public use. The sale and distribution of such hot water is, therefore, subject to regulation by the public utilities commission. *Public Utils. Comm'n v. Natatorium Co.*, 36 Idaho 287, 211 P. 533 (1922).

Rescission.

An order based upon a finding made without evidence, or upon a finding made upon evidence which clearly does not support it, is an arbitrary act against which courts afford relief. *Oregon Short Line R.R. v. Public Utils. Comm'n*, 47 Idaho 482, 276 P. 970 (1929).

Unserved Area within Certified Area.

It is within the public utilities commission's jurisdiction, as a condition of the certificate of convenience and necessity, to review the extension of service into an unserved area within an already certified area, provided the utility has not substantially completed the extension; the commission may rescind, alter or amend the certificate of convenience and necessity previously issued for an unserved area upon a showing that the "public convenience and necessity" does not require the extension. *Cambridge Tel. Co. v. Pine Tel. Sys.*, 109 Idaho 875, 712 P.2d 576 (1985).

An unserved area previously certified to a utility may not be revoked when the certified utility is ready, willing and able to extend adequate service at reasonable rates, except where the record clearly shows that "public convenience and necessity" do not require the extension of service into a certified but unserved area. *Cambridge Tel. Co. v. Pine Tel. Sys.*, 109 Idaho 875, 712 P.2d 576 (1985).

Cited in: *Joy v. Winstead*, 70 Idaho 232, 215 P.2d 291 (1950); *Mountain States Tel. & Tel. Co. v. Jones*, 75 Idaho 78, 267 P.2d 634 (1954); *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 685 P.2d 276 (1984).

decisions of the commission which have become final and conclusive shall not be attacked collaterally.

History.

1913, ch. 61, § 61, p. 247; reen. C.L. 106:134; C.S., § 2502; I.C.A., § 59-625.

JUDICIAL DECISIONS

ANALYSIS

Challenging final orders.
Collateral attack.
Construction.
Hearing on second application.
Procedural errors.
Purpose.

Challenging Final Orders.

Final orders of the public utilities commission should ordinarily be challenged either by petition to the commission for rehearing or by appeal to the supreme court as provided by §§ 61-626 and 61-627 and Idaho Const., Art. V, § 9, since a different rule would lead to endless consideration of matters previously presented to the commission and confusion about the effectiveness of commission orders. *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 597 P.2d 1058 (1979).

Collateral Attack.

Where plaintiff, a large "firm service" consumer of gas sought to attack interpretation of defendant public utility's rate tariff that such large "firm service" consumers must pay both a demand charge for the amount of gas it would have a right to demand each month and a commodity charge for the amount actually used, with no credit of the one against the other, this was not an impermissible collateral attack on the commission order granting the tariff, but a request that the commission enforce the terms of the rate tariffs adopted. *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 597 P.2d 1058 (1979).

A complaint, which challenges the procedures by which a rate increase application subsequently considered and in part approved by the commission was submitted, is an impermissible collateral attack on the commission's order which concluded that case. *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 597 P.2d 1058 (1979).

Contention by large "firm service" gas customer that defendant-supplier had erred in pro-rating its bill for month that new tariff went into effect on assumption gas consumption had been uniform when, in fact, the bulk of the gas had been used prior to the time the new schedule became effective, resulting in an error of almost \$45,000.00, was not an impermissible collateral attack on the com-

mission order granting the new tariff, but a permissible challenge to implementation of that order. *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 597 P.2d 1058 (1979).

A challenge by a power company to the public utility commission's authority to promulgate intervenor funding rules pursuant to the public utilities regulatory policies act, 16 U.S.C.S. § 2601, could be made even though there was no direct appeal from the order adopting those rules, since this section does not prohibit collateral attack when the issuing agency lacks jurisdiction over the matter considered. *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 744, 639 P.2d 442 (1981).

Construction.

Orders and decisions referred to are only those the commission is authorized to make; the section does not seek to confer upon the commission judicial powers in contravention of the constitution. *Neil v. Public Utils. Comm'n*, 32 Idaho 44, 178 P. 271 (1919).

Hearing on Second Application.

Housemover's second application for a motor contract carrier permit and the hearing thereon did not constitute a collateral attack on the commission's previous order denying him a permit, where testimony of some witnesses was not available to housemover at the time of the initial proceeding. *Associated Pac. Movers v. Rowley*, 97 Idaho 663, 551 P.2d 618 (1976).

Procedural Errors.

Mere procedural errors do not render an order of the commission vulnerable to collateral attack unless those errors result in a denial of due process to a party. *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 597 P.2d 1058 (1979).

Purpose.

The legislature has afforded the orders of the commission a degree of finality similar to

that possessed by judgments made by a court of law. *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 597 P.2d 1058 (1979).

Cited in: *Mountain States Tel. & Tel. Co. v. Jones*, 75 Idaho 78, 267 P.2d 634 (1954).

61-626. Reconsideration — Procedure — Order not stayed — Change of original order. — (1) After an order has been made by the commission, any corporation, public utility or person interested therein shall have the right, within twenty-one (21) days after the date of said order, to petition for reconsideration in respect to any matter determined therein. Within seven (7) days after any corporation, public utility or person has petitioned for reconsideration, any other corporation, public utility, or person may cross-petition for reconsideration in response to any issues raised in any petition for reconsideration. Cross-petitions for reconsideration may be granted if any petition for reconsideration to which they respond is granted on the issues to which the cross-petition is directed, but cross-petitions for reconsideration will be denied when the petitions for reconsideration to which they are directed are denied.

(2) Within twenty-eight (28) days after the filing of a petition for reconsideration the commission shall determine whether or not it will grant such reconsideration, and make and enter its order accordingly. If reconsideration be granted, said order shall specify how the matter will be reconsidered and whether any cross-petitions for reconsideration will be granted. The matter must be reheard, or written briefs, comments or interrogatories must be filed, within thirteen (13) weeks after the date for filing petitions for reconsideration. If reconsideration is ordered, the commission must issue its order upon reconsideration within twenty-eight (28) days after the matter is finally submitted for reconsideration.

(3) A petition for such reconsideration shall not excuse any corporation, public utility or person from complying with or obeying any order or any requirement of any order of the commission or operate in any manner, to stay or postpone the enforcement thereof, except as the commission may by order direct. If after reconsideration, including consideration of matters arising since the making of the order, the commission shall be of the opinion that the original order or any part thereof is in any respect unjust or unwarranted or should be changed, the commission may abrogate or change the same. An order made after any such reconsideration, abrogating or changing the original order, shall have the same force and effect as an original order, and shall not affect any right or the enforcement of any right arising from or by virtue of the original order.

History.

1913, ch. 61, § 62, p. 247; reen. C.L. 106:135; C.S., § 2503; I.C.A., § 59-626; am.

1957, ch. 126, § 1, p. 214; am. 1984, ch. 110, § 1, p. 253.

JUDICIAL DECISIONS

ANALYSIS

Application for rehearing.
Application of section.
Challenging final orders.

Construction.
 Inefficient service.
 Procedural errors.
 Purpose of application.
 Recovery of past losses.
 Scope of appeal.

Editor's note: Most of the cases in the following annotations were decided before the complete rewrite of this section by S.L. 1984, ch. 110, which replaced the petition for rehearing with a petition for reconsideration and changed the various time requirements.

Application for Rehearing.

Application for rehearing must be made and determined before appeal can be prosecuted from order of commission. *Consumers' Co. v. Public Utils. Comm'n*, 40 Idaho 772, 236 P. 732 (1925).

This section makes provision for application for rehearing after order in respect to any matter determined therein and, together with § 61-627, provides for appeal within thirty days after denial of application. *Capital Water Co. v. Public Utils. Comm'n*, 41 Idaho 19, 237 P. 423 (1925).

Where commission denied application for higher rate by utility and a rehearing was pending, the utility was entitled to file a petition in district court for injunction without first asking commission to suspend rates approved by it. *Mountain States Tel. & Tel. Co. v. Jones*, 75 Idaho 78, 267 P.2d 634 (1954).

Contention that lapse of time was sufficient to bar motor carriers' right to rehearing before the commission is without merit, as there was no statutory limitation for application for rehearings and no proof of prejudice or injury occasioned by the delay. *Grover v. Idaho Pub. Utils. Comm'n*, 83 Idaho 351, 364 P.2d 167 (1961).

An issue not presented to the commission for rehearing will not be considered on appeal. *Key Transp., Inc. v. Trans Magic Airlines Corp.*, 96 Idaho 110, 524 P.2d 1338 (1974).

Application of Section.

The amendment of this section by S.L. 1957, ch. 126, § 1 limiting the time for filing applications to 20 days is inapplicable to applications previously filed. *Grover v. Idaho Pub. Utils. Comm'n*, 83 Idaho 351, 364 P.2d 167 (1961).

Developer of small power production "qualifying facility's" (QF) argument that public utilities' unrelenting opposition to QF's facility meant that QF should be allowed to adjust its fuel project location and size to reflect delays caused by public utilities' refusal to comply with federal regulations under the public utility regulatory policies act of 1978, 16 U.S.C.S. § 2601, was not a proper subject for appeal as such relief was not originally

requested of the Idaho public utilities commission. *Rosebud Enters., Inc. v. Idaho Pub. Utils. Comm'n*, 128 Idaho 624, 917 P.2d 781 (1996).

Challenging Final Orders.

Final orders of the public utilities commission should ordinarily be challenged either by petition to the commission for rehearing or by appeal to the supreme court as provided by this section and § 61-627 and Idaho Const., Art. V, § 9, since a different rule would lead to endless consideration of matters previously presented to the commission and confusion about the effectiveness of commission orders. *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 597 P.2d 1058 (1979).

Construction.

Commission is not limited to one rehearing when circumstances indicate that more than one hearing is necessary. *Consumers' Co. v. Public Utils. Comm'n*, 40 Idaho 772, 236 P. 732 (1925).

The commission erred in interpreting this statute to mean that only a party, stockholder, bondholder or party pecuniarily interested in the utility can apply for a rehearing. *Malone v. Van Etten*, 67 Idaho 294, 178 P.2d 382 (1947).

Inefficient Service.

Where it was shown that contract carrier had given inefficient service and had abandoned service as common carrier, sufficient cause was shown to justify issuance of permit to another which was mandatory. *Malone v. Van Etten*, 67 Idaho 294, 178 P.2d 382 (1947).

Procedural Errors.

Review of alleged procedural errors occurring in commission proceedings which are not so substantial as to deny an interested party due process must be sought either in the commission's proceedings, by petition for a rehearing made to the commission after a decision has been rendered, or by appeal to the supreme court from a commission order. *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 597 P.2d 1058 (1979).

Purpose of Application.

The purpose of an application for rehearing is to afford an opportunity to the parties to bring to the attention of the commission in an orderly manner any question theretofore determined in the matter and, thereby, afford the commission an opportunity to rectify any

mistake made by it. *Washington Water Power Co. v. Kootenai Envtl. Alliance*, 99 Idaho 875, 591 P.2d 122 (1979).

Recovery of Past Losses.

The Idaho public utilities commission (PUC) does not have the authority to grant a public utility a surcharge to recover past losses caused by an invalid PUC order set aside by the supreme court on appeal. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 685 P.2d 276 (1984).

Scope of Appeal.

Where the Idaho public utilities commission specifically stated that it would not consider issues concerning the areas awarded to plaintiff's competitor in plaintiff's cross-peti-

tion for reconsideration because these issues were beyond that scope and because plaintiff did not file a timely petition for reconsideration, the supreme court would not address them. *Eagle Water Co. v. Idaho Pub. Utils. Comm'n*, 130 Idaho 314, 940 P.2d 1133 (1997).

Cited in: *Joy v. Winstead*, 70 Idaho 232, 215 P.2d 291 (1950); *Mountain States Tel. & Tel. Co. v. Jones*, 76 Idaho 241, 280 P.2d 1067 (1955); *Idaho Underground Water Users Ass'n. v. Idaho Power Co.*, 89 Idaho 147, 404 P.2d 859 (1965); *Washington Water Power Co. v. Idaho Pub. Utils. Comm'n*, 101 Idaho 567, 617 P.2d 1242 (1980); *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 108 Idaho 943, 703 P.2d 707 (1985).

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Utilities, §§ 240 to 243. .

61-627. Appeal to supreme court — Notice of appeal — Matters reviewable on appeal — Extent of review — Record on appeal. — After a petition for reconsideration is denied, or, if the petition is granted, then after the rendition of the decision on reconsideration, the state of Idaho or any party aggrieved may appeal to the supreme court from any order of the public utilities commission by filing a notice of appeal and serving the same in the manner provided by the rules of the supreme court. Upon the payment of the fee therefor, the secretary of the public utilities commission shall prepare, certify, and deliver to the clerk of the supreme court copies of the transcript of the testimony and the relevant documents from the commission files as required under rules adopted by the supreme court for its appeals and shall also certify and deposit with the clerk of the supreme court the original exhibits from that proceeding.

History.

I.C., § 61-627, as added by 1977, ch. 299, § 2, p. 837; am. 1984, ch. 110, § 2, p. 253.

STATUTORY NOTES

Prior Laws.

Former § 61-627, which comprised 1921, ch. 72, § 1, p. 141; I.C.A., § 59-627, was repealed by S.L. 1977, ch. 299, § 1.

JUDICIAL DECISIONS

ANALYSIS

Application of section.
Challenging final orders.
Procedural errors.
Scope of appeal.

Application of Section.

Developer of small power production "qual-

ifying facility's" (QF) argument that public utilities' unrelenting opposition to QF's facil-

ity meant that QF should be allowed to adjust its fuel project location and size to reflect delays caused by public utilities' refusal to comply with federal regulations under the public utility regulatory policies act of 1978, 16 U.S.C.S. § 2601, was not a proper subject for appeal as such relief was not originally requested of the Idaho public utilities commission. *Rosebud Enters., Inc. v. Idaho Pub. Utils. Comm'n*, 128 Idaho 624, 917 P.2d 781 (1996).

Challenging Final Orders.

Final orders of the public utilities commission should ordinarily be challenged either by petition to the commission for rehearing or by appeal to the supreme court as provided by § 61-626 and this section and Idaho Const., Art. V, § 9, since a different rule would lead to endless consideration of matters previously presented to the commission and confusion about the effectiveness of commission orders. *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 597 P.2d 1058 (1979).

Procedural Errors.

Review of alleged procedural errors occurring in commission proceedings which are not so substantial as to deny an interested party due process must be sought either in the commission's proceedings, by petition for a rehearing made to the commission after a decision has been rendered, or by appeal to the supreme court from a commission order.

Utah-Idaho Sugar Co. v. Intermountain Gas Co., 100 Idaho 368, 597 P.2d 1058 (1979).

Scope of Appeal.

In an appeal from Idaho public utilities commission, matters may not be raised for the first time on appeal, and where objections were not raised in a petition for rehearing, they will not be considered by the supreme court. The rationale behind the statute is to afford the commission the opportunity to rectify any mistake before presenting the issue to the supreme court. *Eagle Water Co. v. Idaho Pub. Utils. Comm'n*, 130 Idaho 314, 940 P.2d 1133 (1997).

Where the Idaho public utilities commission specifically stated that it would not consider issues concerning the areas awarded to plaintiff's competitor in plaintiff's cross-petition for reconsideration because these issues were beyond that scope and because plaintiff did not file a timely petition for reconsideration, the supreme court would not address them. *Eagle Water Co. v. Idaho Pub. Utils. Comm'n*, 130 Idaho 314, 940 P.2d 1133 (1997).

Cited in: *United States v. Utah Power & Light Co.*, 98 Idaho 665, 570 P.2d 1353 (1977); *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 99 Idaho 374, 582 P.2d 720 (1978); *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 685 P.2d 276 (1984); *Hayden Pines Water Co. v. Idaho Pub. Utils. Comm'n*, 111 Idaho 331, 723 P.2d 875 (1986); *Miles v. Idaho Power Co.*, 116 Idaho 635, 778 P.2d 757 (1989).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Adequacy of remedy.
Appealable orders.
Interlocutory orders.
Petition for rehearing.
Rehearing.
Review of commission's orders.
Stay of order.

Adequacy of Remedy.

Former similar section provided adequate remedy by appeal without resorting to remedy by writ of prohibition. *Natatorium Co. v. Erb*, 34 Idaho 209, 200 P. 348 (1921).

Adequacy of plaintiff's remedy by appeal is not impaired by reason of the fact that in taking an appeal plaintiff incurs the risk of having supreme court affirm action of commission, or by reason of the fact that it also has an alternative remedy by ignoring any order which commission may make against it and forcing the commission to try out the issue again before the district court. *Natatorium Co. v. Erb*, 34 Idaho 209, 200 P. 348 (1921).

Appealable Orders.

In exercising its powers and discharging its duties the public utilities commission reaches conclusions and makes decisions which can be finally adjudicated only by the courts. Since the constitution limits the jurisdiction of the supreme court to the review of decisions of district courts or the judges thereof, it cannot entertain an appeal directly from the public utilities commission. *Neil v. Public Utils. Comm'n*, 32 Idaho 44, 178 P. 271 (1919).

In pursuance of formal similar statute, water company has right to appeal from decision of commission fixing value of its property for rate making. *Boise Artesian Water Co. v. Public Utils. Comm'n*, 40 Idaho 690, 236 P.

525 (1925).

Prior to appeal and pending a rehearing before the public utilities commission, the supreme court has no jurisdiction to issue a stay order fixing rates, and where such rates are confiscatory the district court with its general and unlimited jurisdiction as ordained by the constitution has jurisdiction to stay the order. *Joy v. Winstead*, 70 Idaho 232, 215 P.2d 291 (1950).

Fact that order denying applications was made without prejudice does not affect its finality; it concludes the rights of the parties in the application proceeding and is final and appealable. *In re Citizens Utils. Co.*, 82 Idaho 208, 351 P.2d 487 (1960).

Interlocutory Orders.

Former similar statute contemplates appeal from final decision fixing valuation, and appeals taken from interlocutory orders in course of proceedings are premature and will be dismissed. *Capital Water Co. v. Public Utils. Comm'n*, 41 Idaho 19, 237 P. 423 (1925).

Such interlocutory orders as order overruling demurrer to complaint in intervention; order granting prayer of complaint in intervention that certain property be excluded in arriving at valuation; and order denying application for rehearing thereon, all made prior to order fixing valuation, are not final orders that are appealable. *Capital Water Co. v. Public Utils. Comm'n*, 41 Idaho 19, 237 P. 423 (1925).

Where 18 warehouse companies filed a petition with the public utilities commission to amend existing schedules of rates by increasing charges for handling grains, peas, and seeds, and commission only increased charges on peas, and withheld further action until a uniform system of accounting was established, which would be ordered forthwith, such order was final, and same is appealable. *Lewiston Grain Growers, Inc. v. Rooke*, 69 Idaho 374, 207 P.2d 1028 (1949).

Petition for Rehearing.

An assignment of error that the commission failed to make specific findings as to certain matters material to the establishment of a rate was procedural rather than substantive in character and, if not included in the petition for rehearing filed with the commission, will not be considered by the supreme court on appeal. *Idaho Underground Water Users Ass'n. v. Idaho Power Co.*, 89 Idaho 147, 404 P.2d 859 (1965).

An issue not presented to the commission for rehearing will not be considered on appeal.

Key Transp., Inc. v. Trans Magic Airlines Corp., 96 Idaho 110, 524 P.2d 1338 (1974).

Rehearing.

Party is required to ask for rehearing before taking appeal, and may ask for rehearing of cause in its entirety or of only one or more of matters determined in original order. *Consumers' Co. v. Public Utils. Comm'n*, 40 Idaho 772, 236 P. 732 (1925).

Purpose of application for rehearing is to afford opportunity to parties to bring to attention of commission, in orderly manner, any question theretofore determined and afford commission opportunity to rectify any mistake before presenting same to supreme court. *Consumers' Co. v. Public Utils. Comm'n*, 40 Idaho 772, 236 P. 732 (1925).

A rehearing would not be granted relative to application for certificate of convenience to rival natural gas companies, even though the question was important, where it was necessary for the supreme court to send the proceeding back for further proceedings before the commission. *In re Intermountain Gas Co.*, 77 Idaho 188, 289 P.2d 933 (1955).

Review of Commission's Orders.

The court on review has the same record before it that the commission had and may determine that the evidence is sufficient to sustain the findings and conclusions of the commission. *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083 (1914).

On appeal from the public utilities commission's orders, the court will review the motions and the rulings made by the commission and will decide whether an error was made. *Federal Mining & Smelting Co. v. Public Utils. Comm'n*, 26 Idaho 391, 143 P. 1173 (1914).

In fixing a reasonable and just rate for a public utility, the commission and the court on review must bear in mind the provisions of the state constitution that no person shall be deprived of his property without due process of law, and that private property may not be taken for public use until a just compensation shall be paid therefor. *Murray v. Public Utils. Comm'n*, 27 Idaho 603, 150 P. 47 (1915).

Stay of Order.

No right of appeal to district court exists. However, due process requires that courts stay an order of a commission which may result in confiscation and irreparable loss. Such action by the court must not be a judicial review of the merits of the controversy, i.e., the correctness of the rates, but merely is to stay the order until final adjudication. *Joy v. Winstead*, 70 Idaho 232, 215 P.2d 291 (1950).

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Utilities,
§ 183 et seq.

C.J.S. — 73B C.J.S., Public Utilities,
§§ 246 to 270.

61-628. Notice of appeal — Filing and service. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1921, ch. 72,

§ 2, p. 141; I.C.A., § 59-628, was repealed by
S.L. 1977, ch. 299, § 1.

61-629. Matters reviewable on appeal — Extent of review — Judgment. — No new or additional evidence may be introduced in the Supreme Court, but the appeal shall be heard on the record of the commission as certified by it. The review on appeal shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order appealed from violates any right of the appellant under the constitution of the United States or of the state of Idaho. Upon the hearing the Supreme Court shall enter judgment, either affirming or setting aside or setting aside in part the order of the commission. In case the order of the commission is set aside or set aside in part, the commission, upon its own motion or upon motion of any of the parties, may alter or amend the order appealed from to meet the objections of the court in the manner prescribed in section 61-624, Idaho Code.

History.

1921, ch. 72, § 3, p. 141; I.C.A., § 59-629;
am. 1981, ch. 129, § 1, p. 217.

JUDICIAL DECISIONS

ANALYSIS

Ability to furnish service.

Appeals.

Certificate of public convenience.

Certificate of public necessity.

Constitutional rights.

Construction of rate schedules.

Discretion of commission.

Evidence.

Evidence on appeal.

Findings of fact.

Fixing rates.

Hypothetical capital structure.

Inadequate record.

Issues not determined by commission.

Jurisdiction.

Notice.

Order set aside.

Presumption of correctness.

Prorating bills.

Restoration of service.

Unreasonable expenditures.

Ability to Furnish Service.

Public utilities commission, in passing upon applications of rival gas companies for certificates of convenience for distribution of natural gas within the state, should have considered the fact that one of the companies was equipped to furnish the gas to a large section of the state whereas the other companies were not able to do so. In re Intermountain Gas Co., 77 Idaho 188, 289 P.2d 933 (1955).

The public utilities commission could not base its order granting a certificate of convenience to a natural gas company on the possible available supply of natural gas to the state in the future, since this constituted speculation. In re Intermountain Gas Co., 77 Idaho 188, 289 P.2d 933 (1955).

In a proceeding before the public utilities commission relative to the granting of a certificate of convenience for distribution of natural gas in the state, where it appeared that the applicant, whose plan was sound, was backed by ample financial and technical support, and it could distribute to a wide area of the state, but the commission granted the application of a rival company whose plan was not sound and who could not distribute over a wide area, the order of the commission was set aside and the proceeding remanded to the commission for further action. In re Intermountain Gas Co., 77 Idaho 188, 289 P.2d 933 (1955).

Appeals.

With regard to questions of law, the review on appeal to the supreme court is limited to whether Idaho public utilities commission regularly pursued its authority. Rosebud Enters., Inc. v. Idaho Pub. Utils. Comm'n, 128 Idaho 624, 917 P.2d 781 (1996).

Certificate of Public Convenience.

Cause was remanded to the commission for further proceedings where it was shown that appellant proposed to serve residents on both sides of the river and presented its plan for crossing the river, but the company awarded the certificate of public convenience and necessity for the distribution of natural gas did not propose to serve the area north of the river, it not considering it feasible to serve such area at the present time, since the commission either should have preferred the company serving both sides of the river or investigated the feasibility of such service. Washington Water Power Co. v. Idaho Pub. Utils. Comm'n, 84 Idaho 341, 372 P.2d 409 (1962).

Certificate of Public Necessity.

Local authorities may not decide or control issues such as the granting of a certificate of public necessity and convenience for the distribution of natural gas to one of two rival

companies, the determination of which the law enjoins upon the commission, but the opinions and wishes of the people to be served by a public utility will, in choosing between rival applicants, receive consideration by the commission. Washington Water Power Co. v. Idaho Pub. Utils. Comm'n, 84 Idaho 341, 372 P.2d 409 (1962).

Constitutional Rights.

Grant of certificate of convenience and necessity for natural gas service was within commission's authority and not violation of constitutional rights of company already supplying manufactured gas. McFayden v. Public Utils. Consol. Corp., 50 Idaho 651, 299 P. 671 (1931).

On appeal from public utilities commission, jurisdiction of supreme court is limited to determining whether commission pursued statutory authority and whether order complained of infringes constitutional rights. Coeur d'Alene Auto Freight v. Public Utils. Comm'n, 51 Idaho 56, 1 P.2d 627 (1931).

Construction of Rate Schedules.

Although the construction of a contract is generally regarded as a question of law, the construction of technical terms and provisions in public utility rate schedules is an endeavor peculiarly within the realm of the commission's expertise and will be sustained where the decision is based upon a reasonable interpretation of the instrument. Utah-Idaho Sugar Co. v. Intermountain Gas Co., 100 Idaho 368, 597 P.2d 1058 (1979).

Discretion of Commission.

Questions of cost of equity and rate of return are matters which raise extremely complicated issues, and deciding these questions is a function of the Idaho public utilities commission, as these questions are within the commission's area of expertise. The adoption of a standard for determining the reasonableness of payments to an affiliate raises many complex issues which are best left for the commission to deal with initially. Washington Water Power Co. v. Idaho Pub. Utils. Comm'n, 101 Idaho 567, 617 P.2d 1242 (1980).

So long as regulatory bodies adequately explain their departure from prior rulings so that a reviewing court can determine that their decisions are not arbitrary or capricious, orders based upon positions substantially different than those taken in previous proceedings can be upheld. Bldg. Contrs. Ass'n v. Idaho PUC, 151 Idaho 10, 253 P.3d 684 (2011).

Evidence.

Where evidence presented to the public utilities commission is competent and substantial in support of the findings made and there has been no clear abuse of discretion, the supreme court of Idaho is constrained to

affirm those findings. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981); *Hayden Pines Water Co. v. Idaho Pub. Utils. Comm'n*, 111 Idaho 331, 723 P.2d 875 (1986).

Substantial evidence for the purpose of judicial review of an administrative agency's action requires more than a mere scintilla of evidence in support of the agency's determination, though something less than the weight of the evidence; in other words, the substantial competent evidence rule requires a court to determine whether the agency's findings of fact are reasonable. *Hayden Pines Water Co. v. Idaho Pub. Utils. Comm'n*, 111 Idaho 331, 723 P.2d 875 (1986).

The public utilities commission's finding that meter installation fees may never be booked as income (and reduction of revenue requirement) was not supported by substantial competent evidence, where the water utility would not be able to recoup the accompanying loss in future rates, and the IRS, the Uniform System of Accounts for Small Water Utilities, and the commission itself in the past had all permitted utilities to treat those fees as income. *Hayden Pines Water Co. v. Idaho Pub. Utils. Comm'n*, 111 Idaho 331, 723 P.2d 875 (1986).

Evidence on Appeal.

The evidence to be considered by the court on an appeal is the transcript of the proceedings had before the commission, and not affidavits or showings made, which are not part of the record. *Mountain View Rural Tel. Co. v. Interstate Utils. Co.*, 55 Idaho 86, 38 P.2d 40 (1934).

Where the evidence showed that the service afforded by other common carriers in the area after the discontinuance of the train was adequate to meet the public needs, also that high quality highways provided direct routes in various directions for private automobiles, the court would take into consideration the limited public use of the passenger service, the expense and net loss to the railroad in finding that the commission had not abused its discretionary power in entering the order authorizing the discontinuance of operation of certain trains. *In re Union Pac. R.R.*, 81 Idaho 300, 340 P.2d 1103 (1959).

Review of the evidence on appeal is limited to whether it is competent and substantial. *Key Transp., Inc. v. Trans Magic Airlines Corp.*, 96 Idaho 110, 524 P.2d 1338 (1974).

Findings of Fact.

Statute does not contemplate that commission shall divide hearing on valuation and make findings of fact and decision and order upon its rejection or inclusion of certain property useful for purposes of valuation as every time commission rules upon some contested point it is not called upon to immediately

make findings of fact and an order that is appealable in and of itself. *Capital Water Co. v. Public Utils. Comm'n*, 41 Idaho 19, 237 P. 423 (1925).

Order of commission based on findings made without evidence or upon evidence which does not support it is an arbitrary act against which courts afford relief. *Oregon Short Line R.R. v. Public Utils. Comm'n*, 47 Idaho 482, 276 P. 970 (1929).

Statute limiting court to determination of a question whether public utilities commission regularly pursued its authority on appeal therefrom pre-supposes and necessitates findings by commission on ultimate facts necessary to support its conclusions. *Mountain View Rural Tel. Co. v. Interstate Tel. Co.*, 55 Idaho 514, 46 P.2d 723 (1935).

Although findings of fact of public utilities commission are binding on the supreme court, the findings and conclusions of the commission must be sustained by competent evidence in order to have this effect. *State ex rel. Taylor v. Union Pac. R.R.*, 60 Idaho 185, 89 P.2d 1005 (1939).

Where the commission did not present in its rate increase order the basic facts necessary to support reasonably its conclusion with respect to reasonableness of water utility's operating expenses, the rate increase order was set aside in all respects. *Boise Water Corp. v. Idaho Pub. Utils. Comm'n*, 97 Idaho 832, 555 P.2d 163 (1976).

Fixing Rates.

Where increased rates were established by the federal government under its wartime power, and when the government restored the roads to their respective owners, and the public utilities commission reduced the rates to the original rate, it will be presumed such rate was reasonable because the rate originally established had been long acquiesced in without complaint on the part of either the shipper or carrier. *Chicago M. & St. P. Ry. Co. v. Public Utils. Comm'n*, 41 Idaho 181, 238 P. 970 (1925).

Public utilities commission order fixing rates for warehousing and storing cereal grains was approved where there was substantial evidence to support rates as fixed, and warehousemen had failed to show that there was such an attack upon rights of property under guise of regulations as to deny just compensation for private property taken for public use. *Nez Perce Roller Mills v. Public Utils. Comm'n*, 54 Idaho 696, 34 P.2d 972 (1934).

Order of commission which allowed a return under existing rates based on capital structure at 5.71% upon company's intrastate investment was not confiscatory. *In re Mountain States Tel. & Tel. Co.*, 76 Idaho 474, 284 P.2d 681 (1955).

The supreme court will not interfere with the making of public utility rates by the commission as long as the latter regularly pursues its authority within constitutional limitations. *In re Mountain States Tel. & Tel. Co.*, 76 Idaho 474, 284 P.2d 681 (1955).

Commission was entitled to reject so-called Charleston Plan for allocation of company's property between intrastate and interstate services and adopt a plan of its own as long as the plan adopted was within its authority and not confiscatory. *In re Mountain States Tel. & Tel. Co.*, 76 Idaho 474, 284 P.2d 681 (1955).

Use of peak period of August 1952 by the commission in allocating property of company in intrastate use was within the authority of the commission. *In re Mountain States Tel. & Tel. Co.*, 76 Idaho 474, 284 P.2d 681 (1955).

In order to prevent subsidizing interstate sales for resale by Idaho retail customers, the commission was correct in discounting this portion of the utility's operations in determining intrastate rates assuming that these sales had not previously been discounted in the power company's original rate increase application. *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 99 Idaho 374, 582 P.2d 720 (1978).

The commission could determine a fair rate of return from Idaho intrastate customers by first determining an Idaho intrastate rate base representing Idaho operations producing power to be sold in intrastate commerce and then determining a fair rate of return thereon, or it could determine a fair rate of return from all Idaho operations and then deduct the portion of deficiency reflecting Idaho operations producing power for interstate sales for resale, so long as the commission does not exceed its jurisdiction and provided that the end result of the methods used by the commission to compute a utility's rate of return produce a "fair, reasonable or sufficient" result. *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 99 Idaho 374, 582 P.2d 720 (1978).

Hypothetical Capital Structure.

The only question presented when the public utilities commission adopts a hypothetical capital structure is whether, under the circumstances of the case, the commission has abused its discretion. *General Tel. Co. v. Idaho Pub. Utils. Comm'n*, 109 Idaho 942, 712 P.2d 643 (1986).

Inadequate Record.

Where the record is inadequate to permit the reviewing court to determine whether or not an agency's action is supported by substantial competent evidence, a remand to the agency for further development of the record may be required; the inadequacy of the record must be such that, depending on its resolution, the agency might have reached a different result. *Hayden Pines Water Co. v. Idaho*

Pub. Utils. Comm'n, 111 Idaho 331, 723 P.2d 875 (1986).

Issues Not Determined by Commission.

Where commission in its order did not determine the issues as between two competing applicants, nor the relative merits of the showings made by them, the issues could not be reviewed by the supreme court, since such determination is a function of the commission. *In re Citizens Utils. Co.*, 82 Idaho 208, 351 P.2d 487 (1960).

Jurisdiction.

Idaho Const., Art. V, § 9 authorizes the supreme court only limited jurisdiction to review orders of the public utilities commission, and this section further defines that limited jurisdiction. *Empire Lumber Co. v. Washington Water Power Co.*, 114 Idaho 191, 755 P.2d 1229 (1987), cert. denied, 488 U.S. 892, 109 S. Ct. 228, 102 L. Ed. 2d 218 (1988).

Under Idaho Const., Art. V, § 9, the Idaho supreme court has only limited jurisdiction to review decisions of the public utilities commission; on questions of law, the review on appeal shall not be extended further than to determine whether the commission has regularly pursued its authority. *A.W. Brown Co. v. Idaho Power Co.*, 121 Idaho 812, 828 P.2d 841 (1992).

Idaho supreme court had the authority to review an order entered by the Idaho public utilities commission after a power company requested that it be allowed to recover lost revenue from the implementation of an irrigation buy-back program; the supreme court concluded that the commission made a policy decision to include lost revenue in the power cost adjustment mechanism. *Idaho Power Co. v. Idaho PUC*, 140 Idaho 139, 90 P.3d 889 (2004).

Notice.

Where a gas utility was without notice that the continuation of its retail gas appliance sales business was at issue in a rate hearing the utility was denied the opportunity to meet the issue of whether continuation of its retail business was in the public interest, and thus the orders of the commission would be set aside and could not be upheld in part even though the rate-setting order was properly made. *Intermountain Gas Co. v. Idaho Pub. Util. Comm'n*, 97 Idaho 113, 540 P.2d 775 (1975).

Order Set Aside.

If a rate setting order of the public utilities commission is later set aside by the supreme court, no rates and charges previously collected may be adjusted as a result; similarly, no rates and charges later established by the commission may be adjusted from what they otherwise would have been to take into ac-

count what the appealed order would have been before it was set aside had it, during the time it was in effect, conformed to or been altered or amended to meet the objections of the opinion of the supreme court. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 685 P.2d 276 (1984).

Where the public utilities commission order, which required the water utility to begin booking its connection fees as contributions rather than as revenue, failed to specify whether or not those fees collected that year prior to the date of the order should be so booked, the supreme court set aside the decision of the commission without holding that it was either valid or invalid and remanded the decision to the agency for further determinations pursuant to § 61-624 on the question of the effective date of the pertinent part of the order. *Hayden Pines Water Co. v. Idaho Pub. Utils. Comm'n*, 111 Idaho 331, 723 P.2d 875 (1986).

Presumption of Correctness.

Upon appeal to supreme court from order of public utilities commission, findings of commission are presumptively correct, and function of court is only to determine whether order is valid and reasonable, and whether it invades any constitutional right. *Nez Perce Roller Mills v. Public Utils. Comm'n*, 54 Idaho 696, 34 P.2d 972 (1934).

Prorating Bills.

Where a natural gas utility changed its rates affecting only 76 large volume "firm service" customers in the middle of its billing period in such a manner that their rates would be substantially increased, it was error to prorate such customers' bills on the assumption gas use would be constant, since it was reasonable to have read all of the small number of meters on the day the new rate went into effect, and such a customer would be entitled to a refund for the overcharge. *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 597 P.2d 1058 (1979).

Restoration of Service.

A railroad agency service which has been discontinued with the permission of the public utilities commission may be restored whenever changed conditions justify such requirement. *In re Union Pac. R.R.*, 64 Idaho 529, 134 P.2d 599 (1943).

Unreasonable Expenditures.

Record required reversal of order of public utilities commission ordering railroad to con-

struct new depot at Soda Springs, which contemplated expenditure of approximately \$25,000 to \$30,000 and remanding of cause for further evidence relating to repairing of the existing depot, in view of the fact that if depot could be repaired for approximately \$3,000 and if, as repaired, depot would be reasonably as adequate as a new structure, the difference between cost of repair and cost of new depot would be so disproportionate as to render unreasonable the requirement that a new depot be constructed. *State ex rel. Taylor v. Union Pac. R.R.*, 60 Idaho 185, 89 P.2d 1005 (1939).

Cited in: *Idaho Mut. Benefit Ass'n v. Robison*, 65 Idaho 793, 154 P.2d 156 (1944); *Lewiston Grain Growers, Inc. v. Rooke*, 69 Idaho 374, 207 P.2d 1028 (1949); *Joy v. Winstead*, 70 Idaho 232, 215 P.2d 291 (1950); *In re Pacific Tel. & Tel. Co.*, 71 Idaho 476, 233 P.2d 1024 (1951); *Allied Van Lines, Inc. v. Idaho Pub. Utils. Comm'n*, 79 Idaho 220, 312 P.2d 1050 (1957); *Idaho Underground Water Users Ass'n v. Idaho Power Co.*, 89 Idaho 147, 404 P.2d 859 (1965); *Bunker Hill Co. v. Washington Water Power Co.*, 98 Idaho 249, 561 P.2d 391 (1977); *Citizens Utils. Co. v. Idaho Pub. Utils. Comm'n*, 99 Idaho 164, 579 P.2d 110 (1978); *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 282, 629 P.2d 678 (1981); *J.R. Simplot Co. v. Intermountain Gas Co.*, 102 Idaho 339, 630 P.2d 131 (1981); *Idaho State Bar Ass'n v. Idaho Pub. Utils. Comm'n*, 102 Idaho 672, 637 P.2d 1168 (1981); *Sun Valley Ctr. for Arts & Humanities, Inc. v. Sun Valley Co.*, 107 Idaho 411, 690 P.2d 346 (1984); *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984); *Cambridge Tel. Co. v. Pine Tel. Sys.*, 109 Idaho 875, 712 P.2d 576 (1985); *Idaho Fair Share v. Idaho Pub. Utils. Comm'n*, 113 Idaho 959, 751 P.2d 107 (1988); *Miles v. Idaho Power Co.*, 116 Idaho 635, 778 P.2d 757 (1989); *Building Contractors Ass'n v. Idaho Public Utils. Comm'n*, 128 Idaho 534, 916 P.2d 1259 (1996); *Rosebud Enters., Inc. v. Idaho Public Utils. Comm'n*, 128 Idaho 609, 917 P.2d 766 (1996); *Eagle Water Co. v. Idaho Pub. Utils. Comm'n*, 130 Idaho 314, 940 P.2d 1133 (1997); *Industrial Customers of Idaho Power v. Idaho Pub. Utils. Comm'n*, 134 Idaho 285, 1 P.3d 786 (2000); *Hulet v. Idaho PUC*, 138 Idaho 476, 65 P.3d 498 (2003); *Ryder v. Idaho PUC (In re Ryder)*, 141 Idaho 918, 120 P.3d 736 (2005); *McNeal v. Idaho PUC*, 142 Idaho 685, 132 P.3d 442 (2006).

61-630. Right to be heard on appeal. — The commission and any party to the proceeding whether served with notice of appeal or not shall have the right to appear and be heard on any appeal taken hereunder.

History.

1921, ch. 72, § 4, p. 141; I.C.A., § 59-630.

61-631. Costs on appeal — Enforcement. — Whenever costs are awarded to a party by the supreme court, the party claiming such costs shall file a memorandum of costs in such manner as the supreme court shall direct by its rules. Costs taxed in the supreme court shall be added to any order required by the remittitur. The payment of costs on appeal shall be enforced by the public utilities commission.

History.

1921, ch. 72, § 5, p. 141; I.C.A., § 59-631;
am. 1989, ch. 37, § 1, p. 48.

STATUTORY NOTES**Compiler's Notes.**

Sections 6 through 8 of S.L. 1921, ch. 72

were repealed, § 9 was a repealing clause,
and § 10 was an emergency clause.

61-632. Procedure on appeals from district court applicable. [Repealed.]

STATUTORY NOTES**Compiler's Notes.**

This section, which comprised 1921, ch. 72,

§ 8, p. 141; I.C.A., § 59-632, was repealed by
S.L. 1977, ch. 299, § 1.

61-633. Stay of order — Notice. — No court of this state shall enjoin or restrain the enforcement of any order of the commission or stay the operation thereof, unless the applicant for such writ shall give three (3) days' notice of said application to all adverse parties and to the commission. On the hearing of such application, the applicant shall present to the court a transcript of the proceedings had before the commission, including the evidence, and such transcript shall be considered by the court in determining the applicant's right to an injunction, restraining order or other order suspending or staying the operation of the order or decision of the commission, and if an injunction, restraining order or other order suspends or stays the order of the commission as issued, such order shall contain a specific finding based upon the evidence submitted to the court and identified by reference thereto that great and irreparable damage would result to the petitioner and specifying the nature of the damage.

History.

1913, ch. 61, § 63d, p. 247; reen. C.L.
106:139; C.S., § 2507; I.C.A., § 59-633.

JUDICIAL DECISIONS**ANALYSIS**

Failure to post bond.
Grounds to stay order.
Irreparable damage.
Merits of application not considered.

Notice.

Power to stay order.

Proof.

Rate setting order set aside.

Service of papers.

Transcript.

Failure to Post Bond.

When any party, be it utility, ratepayer or the state, appeals a rate setting order of the public utilities commission to the supreme court, but does not stay the effectiveness of the order by posting bond under the terms of the public utility law, then the rates and charges set forth by the order are final in all respects as service is provided and consumed so long as the order continues in effect. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 685 P.2d 276 (1984).

Where developer of qualifying facility did not petition for a stay of the Idaho public utilities commission (IPUC) order granting Idaho Power rate making assurance regarding its investment in the upgrade of its hydroelectric project, developer's failure to petition for stay and to post a bond precluded it from challenging the assurances offered by the IPUC to Idaho Power. *Rosebud Enters., Inc. v. Idaho Public Utils. Comm'n*, 128 Idaho 633, 917 P.2d 790 (1996).

Grounds to Stay Order.

That telephone utility, in event appeal from order of public utilities commission lowering phone rentals should result in higher rates than those established by commission, might not be able to collect some increased rentals does not show irreparable damage so as to stay order pending determination of appeal. *Mountain View Rural Tel. Co. v. Interstate Utils. Co.*, 55 Idaho 86, 38 P.2d 40 (1934).

That strained relations between telephone utility and users would result, in event of an appeal from order of public utilities commission lowering phone rentals, in higher rates than those established by commission, did not show irreparable damage so as to stay order of commission pending determination of appeal where relations were already strained. *Mountain View Rural Tel. Co. v. Interstate Utils. Co.*, 55 Idaho 86, 38 P.2d 40 (1934).

Where commission does not stay enforcement of a confiscatory rate, and before rehearing is completed, the district court may, if loss cannot be recouped by an increased rate, stay the order until final adjudication. *Joy v. Winstead*, 70 Idaho 232, 215 P.2d 291 (1950).

Irreparable Damage.

That an order of public utilities commissioner lowering phone rentals required telephone utility to change its system of accounts and billing to users did not show irreparable damage so as to stay order of commission

pending determination of appeal, where statute provided that separate accounts must be kept in event order lowering rentals was stayed. *Mountain View Rural Tel. Co. v. Interstate Utils. Co.*, 55 Idaho 86, 38 P.2d 40 (1934).

If a utility were to be held entitled to a surcharge or other monetary relief whenever a public utilities commission (PUC) order is set aside upon appeal, the failure to stay or enjoin enforcement of a PUC order could never subject the utility to the "great and irreparable damage" envisioned by the legislature in enacting § 61-636 and this section. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 685 P.2d 276 (1984).

Merits of Application Not Considered.

On application to stay order of public utilities commission, supreme court cannot pass on merits of appeal to determine if order should be stayed, but must assume that applicant may be successful on its appeal. *Mountain View Rural Tel. Co. v. Interstate Utils. Co.*, 55 Idaho 86, 38 P.2d 40 (1934).

Notice.

Utility complied with section where it gave a three days' notice to commission and other parties in proceeding before commission that it would apply to district court for a temporary injunction. *Mountain States Tel. & Tel. Co. v. Jones*, 75 Idaho 78, 267 P.2d 634 (1954).

Power to Stay Order.

Prior to appeal and pending a rehearing before the public utilities commission, the supreme court has no jurisdiction to issue a stay order fixing rates, and where such rates are confiscatory the district court with its general and unlimited jurisdiction as ordained by the constitution has jurisdiction to stay the order. *Joy v. Winstead*, 70 Idaho 232, 215 P.2d 291 (1950).

Proof.

In hearing on petition by utility for a temporary injunction against order of commission on the ground that rates ordered were confiscatory, proof should include not only the record before the commission but any additional evidence on issue of confiscation. *Mountain States Tel. & Tel. Co. v. Jones*, 75 Idaho 78, 267 P.2d 634 (1954).

Rate Setting Order Set Aside.

If a rate setting order of the public utilities commission is later set aside by the supreme

court, no rates and charges previously collected may be adjusted as a result; similarly, no rates and charges later established by the commission may be adjusted from what they otherwise would have been to take into account what the appealed order would have been before it was set aside had it, during the time it was in effect, conformed to or been altered or amended to meet the objections of the opinion of the supreme court. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 685 P.2d 276 (1984).

Service of Papers.

On application for stay of order of public utilities commission, pending determination of appeal therefrom, the fact that utility failed to serve moving papers on which it relied, at time it served notice of application, did not preclude the supreme court from considering application, where failure of service did not prejudice commission. *Mountain View Rural*

Tel. Co. v. Interstate Utils. Co., 55 Idaho 86, 38 P.2d 40 (1934).

Transcript.

Hearing before the supreme court of an application to stay order of public utilities commission must be had upon transcript of proceedings had before commission including evidence, and not upon affidavits or showing made which are not part of such record and decision of court must be based on evidence and record before commission. *Mountain View Rural Tel. Co. v. Interstate Utils. Co.*, 55 Idaho 86, 38 P.2d 40 (1934).

District court at a hearing to determine whether the court should keep in effect a temporary injunction was not required to consider transcript of evidence at rehearing before the commission where the commission had not completed the rehearing proceeding before it though evidence had been completed. *Mountain States Tel. & Tel. Co. v. Jones*, 76 Idaho 241, 280 P.2d 1067 (1955).

61-634. Stay of order — Bond. — In case the order or decision of the commission is stayed or suspended, the order shall not become effective until a suspending bond has been executed and filed with and approved by the commission, or by the court of review, conditioned in manner and form as the suspending bond specified in section 61-637[, Idaho Code], and the court shall direct that all moneys involved in said proceeding shall be paid into court under the terms and conditions and subject to the disposition thereof, provided in sections 61-637 and 61-638[, Idaho Code].

History.

1913, ch. 61, § 63e, p. 247; compiled and

reen. C.L. 106:140; C.S., § 2508; I.C.A., § 59-634.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertions were added by the

compiler to conform to the statutory citation style.

JUDICIAL DECISIONS

Failure to Post Bond.

When any party, be it utility, ratepayer or the state, appeals a rate setting order of the public utilities commission to the supreme court, but does not stay the effectiveness of the order by posting bond under the terms of the public utility law, then the rates and charges set forth by the order are final in all respects as service is provided and consumed so long as the order continues in effect. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 685 P.2d 276 (1984).

Where developer of qualifying facility did not petition for a stay of the Idaho public

utilities commission (IPUC) order granting Idaho Power rate making assurance regarding its investment in the upgrade of its hydroelectric project, developer's failure to petition for stay and to post a bond precluded it from challenging the assurances offered by the IPUC to Idaho Power. *Rosebud Enters., Inc. v. Idaho Public Utils. Comm'n*, 128 Idaho 633, 917 P.2d 790 (1996).

Cited in: *Joy v. Winstead*, 70 Idaho 232, 215 P.2d 291 (1950); *Mountain States Tel. & Tel. Co. v. Jones*, 76 Idaho 241, 280 P.2d 1067 (1955).

61-635. Stay of order on appeal. — The pendency of an appeal shall

not of itself stay or suspend the operation of the order of the commission, but during the pendency of such appeal, the Supreme Court may stay or suspend, in whole or in part, the operation of the commission's order.

History.

1913, ch. 61, § 64a, p. 247; reen. C.L.

106:141; C.S., § 2509; am. 1921, ch. 72, § 7, p. 141; I.C.A., § 59-635.

JUDICIAL DECISIONS**Merits of Application for Stay.**

The supreme court cannot pass on the merits of an appeal to determine if an order should be stayed, but must assume that the applicant may be successful on its appeal. *Mountain View Rural Tel. Co. v. Interstate Utils. Co.*, 55 Idaho 86, 38 P.2d 40 (1934).

Cited in: *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 685 P.2d 276 (1984).

61-636. Stay of order on appeal — Notice. — No order so staying or suspending an order or decision of the commission shall be made by the court otherwise than upon a three (3) days' notice and after hearing, and if the order or decision of the commission is suspended, the order suspending the same shall contain a specific finding based upon the evidence submitted to the court and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage.

History.

1913, ch. 61, § 64b, p. 247; reen. C.L. 106:142; C.S., § 2510; I.C.A., § 59-636.

JUDICIAL DECISIONS**Irreparable Damage.**

If a utility were to be held entitled to a surcharge or other monetary relief whenever a public utilities commission (PUC) order is set aside upon appeal, the failure to stay or enjoin enforcement of a PUC order could never subject the utility to the "great and irreparable damage" envisioned by the legis-

lature in enacting § 61-633 and this section. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 685 P.2d 276 (1984).

Cited in: *Mountain View Rural Tel. Co. v. Interstate Utils. Co.*, 55 Idaho 86, 38 P.2d 40 (1934).

61-637. Stay of order on appeal — Bond. — In case the order or decision of the commission is stayed or suspended, the order of the court shall not become effective until a suspending bond shall first have been executed and filed with, and approved by the commission (or approved on review by the court), payable to the people of the state of Idaho, and sufficient in amount and security to insure the prompt payment, by the party petitioning for the review, of all damages caused by the delay in the enforcement of the order or decision of the commission, and of all moneys which any person or corporation may be compelled to pay, pending the review proceedings, for transportation, transmission, product, commodity, or service in excess of the charges fixed by the order or decision of the commission, in case said order or decision is sustained. The court, in case it stays or suspends the order or decision of the commission in any matter

affecting rates, fares, tolls, rentals, charges or classifications, shall also by order direct the public utility affected to pay into court, from time to time, there to be impounded until the final decision of the case or into some bank or trust company paying interest on deposits, under such conditions as the court may prescribe, all sums of money which it may collect from any corporation or person in excess of the sum such corporation or person would have been compelled to pay if the order or decision of the commission had not been stayed or suspended.

History.

1913, ch. 61, § 64c, p. 247; reen. C.L. 106:143; C.S., § 2511; I.C.A., § 59-637.

STATUTORY NOTES**Cross References.**

Suspending bond, § 61-634.

Compiler's Notes.

The words enclosed in parentheses so appeared in the act.

JUDICIAL DECISIONS**Failure to Post Bond.**

When any party, be it utility, ratepayer or the state, appeals a rate setting order of the public utilities commission to the supreme court, but does not stay the effectiveness of the order by posting bond under the terms of the public utility law, then the rates and charges set forth by the order are final in all respects as service is provided and consumed

so long as the order continues in effect. *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 685 P.2d 276 (1984).

Cited in: *Mountain View Rural Tel. Co. v. Interstate Utils. Co.*, 55 Idaho 86, 38 P.2d 40 (1934); *Joy v. Winstead*, 70 Idaho 232, 215 P.2d 291 (1950).

61-638. Stay of order on appeal — Accounts pending final decision. — In case the court stays or suspends any order or decision lowering any rate, fare, toll, rental, charge or classification, the commission, upon the execution and approval of said suspending bond, shall forthwith require the public utility affected under the penalty of the immediate enforcement of the order or decision of the commission (pending the review and notwithstanding the suspending order) to keep such accounts verified by oath, as may in the judgment of the commission suffice to show the amounts being charged or received by such public utility, pending the review, in excess of the charges allowed by the order or decision of the commission, together with the names and addresses of the corporations or persons to whom overcharges will be refundable in case the charges made by the public utility, pending the review, be not sustained by the court. The court may, from time to time, require said party petitioning for a review to give additional security on or to increase the said suspending bond whenever in the opinion of the court the same may be necessary to insure the prompt payment of said damages and said overcharges. Upon the final decision by the court, all moneys which the public utility may have collected, pending the appeal in excess of those authorized by such final decision, together with interest in case the court ordered the deposit of such moneys in a bank or trust

company, shall be promptly paid to the corporations or persons entitled thereto, in such manner and through such methods of distribution as may be prescribed by the commission. If any such moneys shall not have been claimed by the corporations or persons entitled thereto within one (1) year from the final decision of the court, the commission shall cause notice to such corporation or person to be given by publication, once a week for two (2) successive weeks, in a newspaper of general circulation, printed and published in the city of Boise, and such other newspaper or newspapers as may be designated by the commission, said notice to state the names of the corporations or persons entitled to such moneys and the amount due each corporation or person. All moneys not claimed within three (3) months after the publication of said notice shall be paid by the public utility under the direction of the commission, into the state treasury for the benefit of the general fund.

History.

1913, ch. 61, § 64d, p. 247; compiled and

reen. C.L. 106:144; C.S., § 2512; I.C.A., § 59-638.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

Publication of notices, § 60-109.

Suspending bond, § 61-634.

Compiler's Notes.

The words enclosed in parentheses so appeared in the act.

JUDICIAL DECISIONS

Apportionment of Interest.

This section was held not applicable in case where state takes possession of sums collected by railroad companies in excess of freight rates authorized by commission, pending hearing in state and federal supreme courts, and deposited by clerk with state treasurer under § 67-1209. *Chicago, M. & St. P. Ry. v. Public Utils. Comm'n*, 47 Idaho 346, 275 P. 780 (1929).

Cited in: *Mountain View Rural Tel. Co. v. Interstate Utils. Co.*, 55 Idaho 86, 38 P.2d 40 (1934); *Joy v. Winstead*, 70 Idaho 232, 215 P.2d 291 (1950); *Utah Power & Light Co. v. Idaho Pub. Utils. Comm'n*, 107 Idaho 47, 685 P.2d 276 (1984).

61-639. Preference on calendar. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1913, ch. 61, § 65, p. 247; reen. C.L. 106:145; C.S., § 2513;

I.C.A., § 59-639, was repealed by S.L. 1977, ch. 299, § 1.

61-640. Hearings to determine valuations. — For the purpose of ascertaining the matters and things specified in section 61-523[, Idaho Code], concerning the value of the property of public utilities, the commission may cause a hearing or hearings to be held at such time or times and place or places as the commission may designate. Before any hearing is had the commission shall give the public utility affected thereby at least thirty (30) days' written notice, specifying the time and place of such hearing and such notice shall be sufficient to authorize the commission to inquire into

the matters designated in this section and in said section 61-523[, Idaho Code], but this provision shall not prevent the commission from making any preliminary examination or investigation into the matters herein referred to, or from inquiring into such matters in any other investigation or hearing.

All public utilities affected shall be entitled to be heard and to introduce evidence at such hearing or hearings. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the commission.

The commission shall make and file its findings of fact in writing upon all matters concerning which evidence shall have been introduced before it which in its judgment have bearing on the value of the property of the public utility affected. Such findings shall be subject to review by the court of this state in the same manner and within the same time as other orders and decisions of the commission. The findings of the commission so made and filed, when properly certified under the seal of the commission, shall be admissible in evidence in any action, proceeding or hearing before the commission or any court, in which the commission, the state or any officer, department or institution thereof or any county, city and county, municipality or other body politic and the public utility affected may be interested whether arising under the provisions of this act or otherwise, and such findings, when so introduced, shall be prima facie evidence of the facts therein stated as to the date therein stated under conditions then existing, and such facts can only be controverted by showing a subsequent change in conditions bearing upon the facts therein determined.

The commission may from time to time cause further hearings and investigations to be had for the purpose of making revaluations or ascertaining the value of any betterments, improvements, additions or extensions made by any public utility subsequent to any prior hearing or investigation, and may examine into all matters which may change, modify or affect any finding of fact previously made, and may at such time make findings of fact supplementary to those theretofore made. Such hearings shall be had upon the same notice and shall be conducted in the same manner, and the findings so made shall have the same force and effect as is provided herein for such original notice, hearing and findings: provided, that such findings made at such supplemental hearings or investigations shall be considered in connection with and as a part of the original findings, except in so far as such supplemental findings shall change or modify the findings made at the original hearing or investigation.

History.

1913, ch. 61, § 66, p. 247; reen. C.L. 106:146; C.S., § 2514; I.C.A., § 59-640.

STATUTORY NOTES

Cross References.

Valuation, § 61-523.

Compiler's Notes.

The bracketed insertions in the first para-

graph were added by the compiler to conform to the statutory citation style.

The term "this act" in the third paragraph refers to S.L. 1913, ch. 61, which is compiled

as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517

to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

ANALYSIS

Appeal.

Hearings for revaluation.

Sufficiency of findings.

Valuation for taxation.

Appeal.

Appeals taken from interlocutory orders before final order are premature and will be dismissed. *Capital Water Co. v. Public Utils. Comm'n*, 41 Idaho 19, 237 P. 423 (1925).

Hearings for Revaluation.

Further hearings for revaluation are conducted in same manner and upon same notice, and findings have same force and effect as original hearings and findings. *Consumers' Co. v. Public Utils. Comm'n*, 40 Idaho 772, 236 P. 732 (1925).

On revaluation, only those things are to be considered which are properly presented in application for revaluation, and order made on such application is appealable same as any other order, after application is made for hearing thereon. *Consumers' Co. v. Public Utils. Comm'n*, 40 Idaho 772, 236 P. 732 (1925).

Sufficiency of Findings.

Commission need not make specific or minutely detailed findings with regard to every

possible question as to value, on which evidence shall have been offered, but it is enough to make specific findings as to the material issues and to show that consideration was given to all relevant and pertinent evidence as to value that was offered. *Capital Water Co. v. Public Utils. Comm'n*, 44 Idaho 1, 262 P. 863 (1926).

Valuation for Taxation.

Valuation by commission for rate making purposes may be adopted by state equalization board as full cash value for taxation purposes. *Washington Water Power Co. v. Kootenai County*, 270 F. 369, modified on other grounds, 273 F. 524 (9th Cir. 1921).

Findings of commission as to value are not binding on state board of equalization, which is not a court, but are admissible in evidence upon hearing before board and may be regarded as prima facie just and reasonable. *Northwest Light & Water Co. v. Alexander*, 29 Idaho 557, 160 P. 1106 (1916).

Cited in: *In re Pacific Tel. & Tel. Co.*, 71 Idaho 476, 233 P.2d 1024 (1951).

61-641. Overcharge — Reparation. — When complaint has been made to the commission concerning any rate, fare, toll, rental or charge for any product, or commodity, furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection: provided, no discrimination will result from such reparation.

History.

1913, ch. 61, § 67a, p. 247; reen. C.L. 106:147; C.S., § 2515; I.C.A., § 59-641.

JUDICIAL DECISIONS

Jurisdiction of Commission.

Where a division of revenues between two telephone companies was not discriminatory,

although it may have been excessive, the commission had no jurisdiction under this section since, before the commission could

order reparations, it must have found that the rates were excessive in light of the public's best interests and no such finding had been made. *Lemhi Tel. Co. v. Mountain States Tel. & Tel. Co.*, 98 Idaho 692, 571 P.2d 753 (1977).

61-642. Overcharge — Recovery of payment. — If the public utility does not comply with the order for the payment or reparation within the time specified in such order, suit may be instituted in any court of competent jurisdiction to recover the same. All complaints concerning excessive or discriminatory charges shall be filed with the commission within three (3) years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one (1) year from the date of the order of the commission. The remedy in this section provided shall be cumulative and in addition to any other remedy or remedies in this act provided in case of failure of a public utility to obey an order or decision of the commission.

History.

106:148; C.S., § 2516; I.C.A., § 59-642; am. 1913, ch. 61, § 67b, p. 247; reen. C.L. 1965, ch. 215, § 1, p. 498.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

CHAPTER 7

PUBLIC UTILITIES LAW — ENFORCEMENT,
PENALTIES, AND INTERPRETATION

SECTION.	SECTION.
61-701. Enforcement of law.	61-710. Penalty for violations by corporation other than a public utility.
61-702. Noncompliance with law — Liability for damage.	61-711. Penalty for violation by employee of corporation other than a public utility.
61-703. Remedies hereunder not exclusive.	61-712. Action to recover penalties — Disposition of fines.
61-704. Penalties cumulative.	61-712A. Civil penalty for violation.
61-705. Summary proceedings by commission.	61-712B. Compromise of civil penalty.
61-706. Penalty for violation.	61-713. Separability.
61-707. Continuing violation.	61-714. Foreign and interstate commerce.
61-708. Responsibility for violation by employees.	
61-709. Penalty for violations by officers and employees.	

61-701. Enforcement of law. — It is hereby made the duty of the commission to see that the provisions of the constitution and statutes of this state affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected and to this end it may sue in the name of the people of the state of Idaho. Upon the request of the commission, it shall

be the duty of the attorney general or the prosecuting attorney of the proper county, to aid in any investigation, hearing or trial had under the provisions of this act and to institute and prosecute actions or proceedings for the enforcement of the provisions of the constitution and statutes of this state affecting the public utilities and for the punishment of all violations thereof.

History.

1913, ch. 61, § 68, p. 247; reen. C.L. 106:149; C.S., § 2517; I.C.A., § 59-701.

STATUTORY NOTES

Cross References.

Attorney general, attorney for commission, § 61-204.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121,

61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

Cited in: Public Utils. Comm'n v. Natatorium Co., 36 Idaho 287, 211 P. 533 (1922); In re Garrett Transf. & Storage Co., 53 Idaho

200, 23 P.2d 739 (1933); State v. Kouni, 58 Idaho 493, 76 P.2d 917 (1938).

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Utilities, § 143 et seq.

61-702. Noncompliance with law — Liability for damage. — In case any public utility shall do, cause to be done or permit to be done, any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by the constitution, any law of this state, or any order or decision of the commission, according to the terms of this act, such public utility shall be liable to the persons or corporations affected thereby for all loss, damages or injury caused thereby or resulting therefrom. An action to recover such loss, damage or injury may be brought in any court of competent jurisdiction by any corporation or person.

History.

1913, ch. 61, § 69, p. 247; reen. C.L. 106:150; C.S., § 2518; I.C.A., § 59-702.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

Res Ipsa Loquitur.

The conclusion to be drawn from defendant water company's evidence was that the cause of rupture in its water main could have been a defect in manufacture of the main, damage to the main in installation which reasonable inspection at that time would have revealed and such condition permitted corrosion to weaken the main, permitting the rupture,

giving rise to an inference of negligence, which the doctrine of *res ipsa loquitur* permits to be drawn from the circumstances, the conclusion reached in this case being in harmony with the duty imposed by statute upon a public utility. *C.C. Anderson Stores Co. v. Boise Water Corp.*, 84 Idaho 355, 372 P.2d 752 (1962).

RESEARCH REFERENCES

A.L.R. — Liability of electric power or light company to patron for interruption, failure or inadequacy of power. 4 A.L.R.3d 594.

Validity, construction and effect of agreement, in connection with real estate lease or license by railroad, for exemption from liability or for indemnification by lessee or licensee, for consequences of railroad's own negligence. 14 A.L.R.3d 446.

Liability of water distributor for damage caused by water escaping from main. 20 A.L.R.3d 1294.

Water distributor's liability for injury due to condition of service lines, meters, and the like, which serve individual consumer. 20 A.L.R.3d 1363.

Liability of one maintaining pipeline for transportation of gas or other dangerous substances for injury or property damage sustained by one using surface. 30 A.L.R.3d 685.

Status of injured adult as trespasser on land not owned by electricity supplier, as affecting its liability for injuries inflicted upon him by electric wires it maintains thereon. 30 A.L.R.3d 777.

Liability in connection with fire or explosion incident to bulk storage, transportation, delivery, loading or unloading of petroleum products. 32 A.L.R.3d 1169.

61-703. Remedies hereunder not exclusive. — This act shall not have the effect to release or waive any right of action by the state, the commission or any corporation or any person for any right, penalty or forfeiture which may have arisen or accrued or may hereafter arise or accrue under any law of this state.

History.

1913, ch. 61, § 70a, p. 247; reen. C.L. 106:151; C.S., § 2519; I.C.A., § 59-703.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-704. Penalties cumulative. — All penalties accruing under this act shall be cumulative of each other, and a suit for the recovery of one (1) penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public utility, or any officer, director, agent or employee thereof, or any other corporation or person.

History.

1913, ch. 61, § 70b, p. 247; reen. C.L.
106:152; C.S., § 2520; I.C.A., § 59-704.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-705. Summary proceedings by commission. — Whenever the commission shall be of the opinion that any public utility is failing or omitting or about to fail or omit, to do anything required of it by law, or by any order, decision, rule, direction or requirement of the commission under the provisions of this act, or is doing anything or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order, decision, rule, direction or requirement of the commission, under the provisions of this act, it shall direct the attorney of the commission to commence an action or proceeding in the district court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides, in the name of the people of the state of Idaho, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction.

The attorney of the commission shall thereupon begin such action or proceeding by petition to such district court, alleging the violation or threatened violation complained of and praying for appropriate relief by way of mandamus or injunction.

It shall thereupon be the duty of the court to specify a time not exceeding twenty (20) days, after the service of the copy of the petition, within which the public utility complained of must answer the petition, and in the meantime said public utility may be restrained. In case of default in answer, or after answer, the court shall immediately inquire into the facts and circumstances of the case. Such corporations or persons as the court may deem necessary or proper to be joined as parties in order to make its judgment, order or writ effective, may be joined as parties. The final judgment in such action or proceedings shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction issue or be made permanent as prayed for in the petition, or in such modified or other form as will afford appropriate relief.

An appeal may be taken to the Supreme Court from such final judgment in the same manner and with the same effect, subject to the provisions of this act, as appeals are taken from judgments of the district court in other actions for mandamus or injunction.

History.

1913, ch. 61, § 71, p. 247; reen. C.L.
106:153; C.S., § 2521; I.C.A., § 59-705.

STATUTORY NOTES

Cross References.

Attorney general as attorney for commission, § 61-204.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121,

61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Utilities, § 239.

61-706. Penalty for violation. — Any public utility which violates or fails to comply with any provisions of the constitution of this state or of this act, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement or any part or provision thereof, of the commission, under the provisions of this act, in a case in which a penalty has not hereinbefore been provided for, such public utility is subject to a penalty of not more than \$2000 for each and every offense.

History.

1913, ch. 61, § 72a, p. 247; compiled and

reen. C.L. 106:154; C.S., § 2522; I.C.A., § 59-706.

STATUTORY NOTES

Cross References.

Distribution of fines, § 19-4705.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to

61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

Cited in: Neil v. Public Utils. Comm'n, 32 Idaho 44, 178 P. 271 (1919).

61-707. Continuing violation. — Every violation of the provisions of this act or of any other order, decision, decree, rule, direction, demand or requirement of the commission, under the provisions of this act, or any part or portion thereof, by any public utility, corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

History.

1913, ch. 61, § 72b, p. 247; reen. C.L. 106:155; C.S., § 2523; I.C.A., § 59-707.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

Cited in: Neil v. Public Utils. Comm'n, 32 Idaho 44, 178 P. 271 (1919).

61-708. Responsibility for violation by employees. — In construing and enforcing the provisions of this act relating to penalties, the act, omission or failure of any officer, agent or employee of any public utility, acting within the scope of his official duties or employment, shall in every case be and be deemed to be the act, omission or failure of such public utility.

History.

1913, ch. 61, § 72c, p. 247; reen. C.L. 106:156; C.S., § 2524; I.C.A., § 59-708.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-709. Penalty for violations by officers and employees. — Every officer, agent or employee of any public utility, who violates or fails to comply with, or who procures, aids or abets any violation by any public utility of any provision of the constitution of this state or of this act, or who fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement or any part or provision thereof, of the commission under the provisions of this act, or who procures, aids or abets any public utility in its failure to obey, observe and comply with any such order, decision, rule, direction, demand or requirement, or any part or provision thereof, in a case in which a penalty has not hereinbefore been provided for, such officer, agent or employee, is guilty of a misdemeanor and is punishable by a fine not exceeding \$1000, or by imprisonment in a county jail not exceeding one (1) year, or by both such fine and imprisonment.

History.

1913, ch. 61, § 73, p. 247; reen. C.L. 106:157; C.S., 2525; I.C.A., § 59-709.

STATUTORY NOTES

Cross References.

Distribution of fines, § 19-4705.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch.

61, which is compiled as §§ 61-101 to 61-121, 506 to 61-515, 61-517 to 61-529, 61-601 to 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-61-315, 61-316 to 61-326, 61-401, 61-403 to 623 to 61-626, 61-633 to 61-638, 61-640 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

Cited in: Neil v. Public Utils. Comm'n, 32 Idaho 44, 178 P. 271 (1919).

61-710. Penalty for violations by corporation other than a public utility. — Every corporation, other than a public utility, which violates any of the provisions of this act, or which fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement or any part or provision thereof, of the commission under the provisions of this chapter, in a case in which a penalty has not hereinbefore been provided for, such corporation is subject to a penalty of not more than \$2000 for each and every offense.

History.

1913, ch. 61, § 74, p. 247; reen. C.L. 106:158; C.S., § 2526; I.C.A., § 59-710.

STATUTORY NOTES

Cross References.

Distribution of fines, § 19-4705.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to

61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-711. Penalty for violation by employee of corporation other than a public utility. — Every person who, either individually, or acting as an officer, agent or employee of a corporation other than a public utility, violates any provision of this act, or fails to observe, obey or comply with any order, decision, rule, direction, demand or requirement, or any part or portion thereof, of the commission under the provisions of this act, or who procures, aids or abets any such public utility in its violation of this act, or in its failure to obey, observe or comply with any such order, decision, rule, direction, demand or requirement, or any part or portion thereof, in a case in which a penalty has not hereinbefore been provided for is guilty of a misdemeanor, and is punishable by a fine not exceeding \$1000, or by imprisonment in a county jail not exceeding one (1) year, or by both such fine and imprisonment.

History.

1913, ch. 61, § 75, p. 247; reen. C.L. 106:159; C.S., § 2527; I.C.A., § 59-711.

STATUTORY NOTES

Cross References.

Distribution of fines, § 19-4705.

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to

61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-712. Action to recover penalties — Disposition of fines. —

Actions to recover penalties under this act shall be brought in the name of the state of Idaho, in the district court in and for the county in which the cause of action or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. Such action shall be commenced and prosecuted to final judgment by the attorney of the commission. In any such action, all penalties incurred up to the time of commencing the same may be sued for and recovered. In all such actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the state in any such action, together with the costs thereof, shall be paid into the state treasury to the credit of the general fund. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

History.

1913, ch. 61, § 76, p. 247; reen. C.L. 106:160; C.S., § 2528; I.C.A., § 59-712.

STATUTORY NOTES

Cross References.

Attorney general as attorney for commission, § 61-204.

Disposition of fines and forfeitures, § 19-4705.

Compiler's Notes.

The distribution of fines and penalties provided for in this section was superseded by § 19-4705, effective January 11, 1971.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

61-712A. Civil penalty for violation. — Any person who violates or fails to comply with, or who procures, aids or abets any violation of title 61, Idaho Code, governing safety of pipeline facilities and the transportation of gas, or of any order, decision, rule or regulation duly issued by the Idaho public utilities commission governing the safety of pipeline facilities and the transportation of gas, shall be subject to a civil penalty of not to exceed two thousand dollars (\$2,000) for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed two hundred thousand dollars (\$200,000) for any related series of violation.

History.

I.C., § 61-712A, as added by 1970, ch. 7,
§ 1, p. 11.

61-712B. Compromise of civil penalty. — Any civil penalty may be compromised by the Idaho public utilities commission. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state to the person charged or may be recovered in a civil action in the state courts.

History.

I.C., § 61-712B, as added by 1970, ch. 7,
§ 2, p. 11.

61-713. Separability. — If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

History.

1913, ch. 61, § 78, p. 247; reen. 1915, ch. 105, § 1, p. 246; compiled and reen. C.L. 106:161; C.S., § 2529; I.C.A., § 59-713.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to 61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

JUDICIAL DECISIONS

Constitutionality of Act.

The Public Utilities Act, S.L. 1913, chapter 61, is constitutional. Idaho Power & Light Co. v. Blomquist, 26 Idaho 222, 141 P. 1083 (1914).

61-714. Foreign and interstate commerce. — Neither this act, nor any provision thereof, except when specifically so stated, shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of the union, except in so far as the same may be permitted under the provisions of the Constitution of the United States and the acts of congress.

History.

1913, ch. 61, § 79, p. 247; reen. C.L. 106:162; C.S., § 2530; I.C.A., § 59-714.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1913, ch. 61, which is compiled as §§ 61-101 to 61-121, 61-124 to 61-129, 61-201 to 61-214, 61-301 to 61-315, 61-316 to 61-326, 61-401, 61-403 to

61-406, 61-501, 61-502, 61-503, 61-504, 61-506 to 61-515, 61-517 to 61-529, 61-601 to 61-617, 61-618, 61-619, 61-621, 61-622, 61-623 to 61-626, 61-633 to 61-638, 61-640 to 61-642, 61-701 to 61-712, 61-713, and 61-714.

CHAPTER 8**STRAY CURRENT AND VOLTAGE REMEDIATION ACT****SECTION.**

61-801. Legislative findings and purposes.

61-802. Definitions.

61-803. Rules.

61-804. Claim — Notice — Response of utility.

61-805. Commission — Jurisdiction — Orders.

SECTION.

61-806. Commission — Rules of practice and procedure.

61-807. Civil actions.

61-808. Damages.

61-809. Limitation of claims.

61-801. Legislative findings and purposes. — The legislature of the state of Idaho finds that the efficient and safe distribution of electricity is critical to the well-being of the citizens and the economy of the state, including the business of agriculture, and that this enactment is necessary for the protection of the public welfare and benefit. The legislature also finds that the potential impact of stray current or voltage on dairy cows is a matter of interest and concern to dairy producers with dairies situated near and served by a multi-grounded wye electrical distribution system, which is the type of distribution system used by utilities in this state. Scientific research has established a level of stray current or voltage, at or below which no effect on a dairy cow's behavior, health or milk production has been shown. To provide for the continued, safe and efficient availability of electricity while addressing complaints regarding stray current or voltage, it is necessary and appropriate to: establish a uniform preventive action level; establish uniform procedures and protocols for measurements of stray current or voltage; require, when necessary, that the sources of stray current or voltage be identified; require, when necessary, adequate remediation; and establish procedures for handling complaints.

History.

I.C., § 61-801, as added by 2005, ch. 189, § 1, p. 578.

STATUTORY NOTES**Prior Laws.**

The following former sections were repealed by S.L. 1999, ch. 383, § 13, p. 1051, effective July 1, 1999:

§ 61-801, which comprised I.C., § 61-801,

as added by 1929, ch. 267, § 1, p. 614; I.C.A., § 59-801; am. 1939, ch. 245, § 1, p. 591; am. 1951, ch. 291, § 1, p. 640; am. 1955, ch. 160, § 1, p. 319; am. 1961, ch. 88, § 1, p. 119; am. 1963, ch. 160, § 1, p. 463; am. 1975, ch. 253,

§ 1, p. 684; am. 1976, ch. 308, § 1, p. 1059; am. 1977, ch. 147, § 1, p. 323; am. 1980, ch. 348, § 1, p. 882; am. 1981, ch. 230, § 2, p. 466; am. 1982, ch. 95, § 135, p. 185; am. 1982, ch. 327, § 1, p. 831; am. 1984, ch. 255, § 1, p. 610; am. 1994, ch. 238, § 1, p. 748; am. 1995, ch. 102, § 1, p. 329, was repealed by S.L. 1999, ch. 383, § 13.

§ 61-802, which comprised I.C., § 61-802, as added by 1929, ch. 267, § 2, subd. a, p. 614; I.C.A., § 59-802; am. 1951, ch. 291, § 2, p. 640; am. 1959, ch. 79, § 1, p. 177; am. 1961, ch. 128, § 1, p. 188; am. 1963, ch. 160, § 3, p. 463, was repealed by S.L. 1999, ch. 383, § 13.

§ 61-803, which comprised I.C., § 61-803, as added by 1929, ch. 267, § 2, subd. b, p. 614; I.C.A., § 59-803; am. 1951, ch. 291, § 3, p. 640, was repealed by S.L. 1999, ch. 383, § 13.

§ 61-804, which comprised I.C., § 61-804, as added by 1951, ch. 291, § 5, p. 640; am. 1953, ch. 82, § 1, p. 106; am. 1969, ch. 302, § 1, p. 904, was repealed by S.L. 1999, ch. 383, § 13.

§ 61-805, which comprised I.C., § 61-805, as added by 1929, ch. 267, § 2, subd. d, p. 614; I.C.A., § 59-805; am. 1951, ch. 291, § 6, p. 640; am. 1967, ch. 49, § 1, p. 94, was repealed by S.L. 1999, ch. 383, § 13.

§ 61-806, which comprised I.C., § 61-806, as added by 1951, ch. 291, § 8, p. 640, was repealed by S.L. 1999, ch. 383, § 13.

§ 61-807, which comprised I.C., § 61-807, as added by 1929, ch. 267, § 4, p. 614; I.C.A., § 59-807; am. 1951, ch. 291, § 9, p. 640, was repealed by S.L. 1999, ch. 383, § 13.

§ 61-808, which comprised I.C., § 61-808, as added by 1929, ch. 267, § 5, p. 614; I.C.A., § 59-808; am. 1951, ch. 291, § 10, p. 640; am. 1959, ch. 79, § 2, p. 177; am. 1963, ch. 160, § 6, p. 463; am. 1973, ch. 96, § 1, p. 165, was repealed by S.L. 1999, ch. 383, § 13.

§ 61-809, which comprised I.C., § 61-809, as added by 1929, ch. 267, § 6, p. 614; I.C.A., § 59-809; am. 1963, ch. 160, § 7, p. 463, was repealed by S.L. 1999, ch. 383, § 13.

§ 61-810, which comprised I.C., § 61-810, as added by 1929, ch. 267, § 7, p. 614; I.C.A., § 59-810; am. 1951, ch. 291, § 11, p. 640; am.

1963, ch. 160, § 8, p. 463; am. 1982, ch. 95, § 136, p. 185, was repealed by S.L. 1999, ch. 383, § 13.

§ 61-811, which comprised I.C., § 61-811, as added by 1951, ch. 291, § 13, p. 640; am. 1959, ch. 80, § 10, p. 179; am. 1963, ch. 160, § 9, p. 463; am. 1972, ch. 148, § 1, p. 319; am. 1988, ch. 265, § 575, p. 549, was repealed by S.L. 1999, ch. 383, § 13.

§ 61-812, which comprised I.C., § 61-812, as added by 1929, ch. 267, § 9, p. 614; I.C.A., § 59-812; am. 1951, ch. 291, § 14, p. 640; am. 1959, ch. 79, § 3, p. 177; am. 1963, ch. 160, § 11, p. 463; am. 1972, ch. 148, § 3, p. 319; am. 1975, ch. 262, § 1, p. 709; am. 1984, ch. 109, § 2, p. 252; am. 1991, ch. 3, § 1, p. 15; am. 1993, ch. 182, § 1, p. 463; am. 1995, ch. 131, § 2, p. 564, was repealed by S.L. 1999, ch. 383, § 13.

§ 61-813, which comprised I.C., § 61-813, as added by 1929, ch. 267, § 10, p. 614; I.C.A., § 59-813; am. 1937, ch. 208, § 1, p. 353; am. 1951, ch. 291, § 15, p. 640; am. 1959, ch. 79, § 4, p. 177; am. 1959, ch. 80, § 11, p. 179, was repealed by S.L. 1999, ch. 383, § 13.

§ 61-814, which comprised I.C., § 61-814, as added by 1929, ch. 267, § 11, p. 614; I.C.A., § 59-814, was repealed by S.L. 1999, ch. 383, § 13.

§ 61-815, which comprised I.C., § 61-815, as added by 1929, ch. 267, § 14, p. 614; I.C.A., § 59-815, was repealed by S.L. 1999, ch. 383, § 13.

§ 61-816, which comprised I.C., § 61-816, as added by 1929, ch. 267, § 15, p. 614; I.C.A., § 59-816, was repealed by S.L. 1999, ch. 383, § 13.

§ 61-817, which comprised I.C., § 61-817, as added by 1929, ch. 267, § 16, p. 614; I.C.A., § 59-817; am. 1951, ch. 291, § 16, p. 640, was repealed by S.L. 1999, ch. 383, § 13.

§ 61-818, which comprised I.C., § 61-818, as added by 1951, ch. 291, § 17, p. 640, was repealed by S.L. 1999, ch. 383, § 13.

Effective Dates.

Section 2 of S.L. 2005, ch. 189 declared an emergency. Approved March 28, 2005.

61-802. Definitions. — As used in this chapter, unless the context otherwise requires:

(1) “Adequate remediation” means corrective action by a utility which results in, and is reasonably likely to sustain, a reduction of stray current or voltage attributable to the utility’s distribution system of fifty percent (50%) or less of the preventive action level.

(2) “Commission” means the Idaho public utilities commission as established pursuant to section 61-201, Idaho Code.

(3) “Cow contact points” means any two (2) electrically conductive points which a dairy cow may, in its normal environment, unavoidably and simultaneously contact.

(4) "Preventive action level" is stray current or voltage that is either:

(a) A steady-state, root mean square (rms), alternating current (AC) of 2.0 milliamp (mA) or more through a 500 ohm resistor connected between cow contact points, as measured by a true rms meter; or

(b) A steady-state, rms, AC voltage of 1.0 volts or more, across (in parallel with) a 500 ohm resistor connected between cow contact points, as measured by a true rms meter.

(5) "Steady-state" is the value of a current or voltage after an amount of time where all transients have decayed to a negligible value.

(6) "Stray current or voltage" is:

(a) Any steady-state, 60 hertz (Hz) (including harmonics thereof), root mean square (rms), alternating current (AC) of less than 20 milliamp (mA) through a 500 ohm resistor connected between cow contact points, as measured by a true rms meter; or

(b) Any steady-state, 60 Hz (including harmonics thereof), rms, AC voltage of less than 10 volts, across (in parallel with) a 500 ohm resistor connected between cow contact points, as measured by a true rms meter. Stray current or voltage is a normal, inherent and unavoidable result of electricity traveling through grounded electrical systems, including a dairy producer's on-farm system and a utility's distribution system, which systems are required by the national electrical code and the national electrical safety code to be grounded to the earth to ensure continuous safety and reliability.

(7) "Utility" means a public utility as defined in section 61-332A, Idaho Code.

History.

I.C., § 61-802, as added by 2005, ch. 189,
§ 1, p. 578.

STATUTORY NOTES

Prior Laws.

Former § 61-802 was repealed. See Prior Laws, § 61-801.

The abbreviations and words enclosed in parentheses so appeared in the law as enacted.

Compiler's Notes.

For more on the national electrical safety code, see <http://standards.ieee.org/about/nesc>.

Effective Dates.

Section 2 of S.L. 2005, ch. 189 declared an emergency. Approved March 28, 2005.

61-803. Rules. — Within six (6) months of the effective date of this chapter, the commission shall promulgate temporary rules and proposed rules, referred to collectively in this chapter as "commission rules," establishing uniform procedures and protocols for the measurement of stray current or voltage. The commission shall review the rules from time to time, or upon petition to the commission, to ensure that the uniform procedures and protocols continue to be the most scientifically and technologically accurate and reliable means of detecting stray current or voltage. If the commission determines that it is appropriate to revise the rules because of advances in science or technology, it is encouraged to do so by the adoption of temporary rules which would confer a benefit on utilities and dairy

producers by making better science available for the measurement of stray current or voltage. Any measurements of stray current or voltage not made in compliance with commission rules shall be inadmissible before the commission or in any civil action. The commission rules shall be applicable to dairy producers, utilities, and all persons or entities involved in any way in the measurement or remediation of stray current or voltage in this state.

History.

I.C., § 61-803, as added by 2005, ch. 189,
§ 1, p. 578.

STATUTORY NOTES

Prior Laws.

Former § 61-803 was repealed. See Prior
Laws, § 61-801.

date of S.L. 2005, ch. 189, which was effective
March 25, 2005.

Compiler's Notes.

The phrase "the effective date of this chap-
ter" in the first sentence refers to the effective

Effective Dates.

Section 2 of S.L. 2005, ch. 189 declared an
emergency. Approved March 28, 2005.

61-804. Claim — Notice — Response of utility. — Any dairy producer in this state who claims that its dairy cows are being affected by any form or type of electrical energy allegedly attributable to a utility including, without limitation, stray current or voltage, shall, as a condition precedent to commencing any civil action against the utility, provide written notice thereof to the utility. The notice shall specify why the dairy producer believes its dairy cows are being affected by electrical energy attributable to the utility. Within fourteen (14) days of receipt of such notice, the utility shall take measurements at cow contact points at the dairy producer's dairy to identify the existence and magnitude of stray current or voltage, if any. If the utility finds a level of stray current or voltage at cow contact points in excess of the preventive action level, the utility shall thereafter promptly identify that portion, if any, of the stray current or voltage that is attributable to the utility's distribution system. If that portion of the stray current or voltage at cow contact points attributable to the utility's distribution system exceeds fifty percent (50%) of the preventive action level, the utility shall, within five (5) business days, commence and diligently pursue to completion, remedial procedures which shall reduce, and are reasonably likely to sustain, that portion of the stray current or voltage at cow contact points attributable to the utility's distribution system to fifty percent (50%) or less of the preventive action level.

History.

I.C., § 61-804, as added by 2005, ch. 189,
§ 1, p. 578.

STATUTORY NOTES

Prior Laws.

Former § 61-804 was repealed. See Prior
Laws, § 61-801.

Effective Dates.

Section 2 of S.L. 2005, ch. 189 declared an
emergency. Approved March 28, 2005.

61-805. Commission — Jurisdiction — Orders. — The commission shall have exclusive, initial jurisdiction to determine whether a utility has complied with the commission rules regarding measurement of stray current or voltage; whether the utility's measurements demonstrated stray current or voltage at or above the preventive action level; whether the utility has properly identified that portion of the stray current or voltage at cow contact points attributable to the utility's distribution system; and whether the utility has complied with its remediation obligation under this chapter.

(1) If, after hearing, the commission determines that (a) the utility complied with the commission rules regarding measurement of stray current or voltage, and (b) the utility properly identified no stray current or voltage in excess of the preventive action level, then the commission shall issue an order that the utility has provided adequate service pursuant to section 61-302, Idaho Code. The commission's order thereon shall be binding on the parties, subject only to the provisions of section 61-807, Idaho Code.

(2) If, after hearing, the commission determines that (a) the utility complied with the commission rules regarding measurement of stray current or voltage, (b) the utility properly identified stray current or voltage in excess of the preventive action level, and (c) the utility properly identified that the portion of stray current or voltage attributable to the utility's distribution system was fifty percent (50%) or less of the preventive action level, then the commission shall issue an order that the utility provided adequate service pursuant to section 61-302, Idaho Code. The commission's order thereon shall be binding on the parties, subject only to the provisions of section 61-807, Idaho Code.

(3) If, after hearing, the commission determines that (a) the utility complied with the commission rules regarding measurement of stray current or voltage, (b) the utility properly identified stray current or voltage in excess of the preventive action level, and (c) the utility properly identified that the portion of stray current or voltage attributable to the utility's distribution system exceeded fifty percent (50%) of the preventive action level, then the commission shall thereafter determine the adequacy of the utility's remediation efforts. The commission's order thereon shall be binding on the parties, subject only to the provisions of section 61-807, Idaho Code. If the dairy producer has complied with the notice provisions set forth in section 61-804, Idaho Code, and the commission has made a determination that the conditions set forth in this subsection are met, then the dairy producer may, not later than one (1) year following completion of adequate remediation, or one (1) year following the issuance of the commission's final order thereon, whichever occurs later, commence a civil action seeking monetary damages against the utility. In any such civil action, damages shall be limited as set forth in section 61-808, Idaho Code.

(4) If, after hearing, the commission determines that (a) the utility failed to comply with the commission rules regarding measurement of stray current or voltage, (b) the utility failed to properly identify, when required pursuant to section 61-804, Idaho Code, to do so, that portion of stray current or voltage attributable to the utility's distribution system, or (c) the utility failed to provide adequate remediation, then the commission shall

order the utility to take measurements of stray current or voltage in conformance with commission rules, or identify that portion of the stray current or voltage attributable to the utility's distribution system and, if necessary, to provide adequate remediation. The commission's order thereon shall be binding on the parties, subject only to the provisions of section 61-807, Idaho Code. If the dairy producer complied with the notice provisions set forth in section 61-804, Idaho Code, and the commission made a determination that the portion of stray current or voltage attributable to the utility's distribution system exceeded fifty percent (50%) of the preventive action level, then the dairy producer may, not later than one (1) year following completion of adequate remediation, or one (1) year following the issuance of the commission's final order thereon, whichever occurs later, commence a civil action seeking monetary damages against the utility. In any such civil action, damages shall be limited as set forth in section 61-808, Idaho Code.

(5) If after hearing, the commission determines that a dairy producer made or pursued a claim in bad faith or for purposes of harassment of the utility, the commission shall require the dairy producer to pay the utility's actual costs of investigation and defense. If, after hearing, the commission determines that a utility acted in bad faith, or for purposes of harassment or delay, the commission shall require the utility to pay the dairy producer's actual costs of investigation, if any, and preparation and presentation of the claim before the commission. The commission's order thereon shall be binding on the parties, subject only to the provisions of section 61-807, Idaho Code.

History.

I.C., § 61-805, as added by 2005, ch. 189,
§ 1, p. 578.

STATUTORY NOTES**Prior Laws.**

Former § 61-805 was repealed. See Prior
Laws, § 61-801.

Effective Dates.

Section 2 of S.L. 2005, ch. 189 declared an
emergency. Approved March 28, 2005.

61-806. Commission — Rules of practice and procedure. — In all matters arising under this chapter which are submitted to the commission for decision, order or review, procedure shall be governed by the commission rules of practice and procedure.

History.

I.C., § 61-806, as added by 2005, ch. 189,
§ 1, p. 578.

STATUTORY NOTES**Prior Laws.**

Former § 61-806 was repealed. See Prior
Laws, § 61-801.

Effective Dates.

Section 2 of S.L. 2005, ch. 189 declared an
emergency. Approved March 28, 2005.

61-807. Civil actions. — No civil action may be commenced by a dairy

producer against a utility seeking damages or other relief allegedly due to injury caused by stray current or voltage unless the dairy producer has complied with the provisions of section 61-804, Idaho Code, and the commission has issued an order pursuant to section 61-805, Idaho Code. In any civil action against a utility for damages or other relief, after the dairy producer has complied with the provisions of section 61-804, Idaho Code, and the commission has issued an order pursuant to section 61-805, Idaho Code, the commission's order shall be admissible in evidence in such civil action.

History.

I.C., § 61-807, as added by 2005, ch. 189,
§ 1, p. 578.

STATUTORY NOTES**Prior Laws.**

Former § 61-807 was repealed. See Prior Laws, § 61-801.

Effective Dates.

Section 2 of S.L. 2005, ch. 189 declared an emergency. Approved March 28, 2005.

61-808. Damages. — In any civil action against a utility for damages pursuant to this chapter, a dairy producer shall be limited to those damages which (a) were incurred by the dairy producer during that period of time commencing twelve (12) months prior to the dairy producer's provision of notice to the utility and ending on the date of completion of adequate remediation, and (b) were caused by that portion of the stray current or voltage attributable to the utility's distribution system.

History.

I.C., § 61-808, as added by 2005, ch. 189,
§ 1, p. 578.

STATUTORY NOTES**Prior Laws.**

Former § 61-808 was repealed. See Prior Laws, § 61-801.

Effective Dates.

Section 2 of S.L. 2005, ch. 189 declared an emergency. Approved March 28, 2005.

61-809. Limitation of claims. — No claim for nuisance may be asserted against a utility for damages due to stray current or voltage. Claims against a utility for damages due to stray current or voltage shall be limited to claims of negligence, including in the case of a prior determination of the commission pursuant to subsections (3) or (4) of section 61-805, Idaho Code, negligence per se. In determining whether the utility was negligent, the utility's conduct shall be judged using a standard of ordinary care under the existing circumstances.

History.

I.C., § 61-809, as added by 2005, ch. 189,
§ 1, p. 578.

STATUTORY NOTES

Prior Laws.

Former § 61-809 was repealed. See Prior Laws, § 61-801.

Effective Dates.

Section 2 of S.L. 2005, ch. 189 declared an emergency. Approved March 28, 2005.

CHAPTER 9

ISSUANCE OF SECURITIES BY PUBLIC UTILITIES

SECTION.

- 61-901. Electric, telephone, water and gas utilities — Issuance of securities authorized — Liens — Pledges — Purposes — Terms — Supervision and control of public utilities commission.
- 61-902. Petition for authority — Notice and hearing — Order — Refund.
- 61-903. Securities which may be issued without order of commission.

SECTION.

- 61-904. Petitions — Prompt disposition — Continuances.
- 61-905. Fees to be paid.
- 61-906. No liability on part of state.
- 61-907. Act superior to all laws.
- 61-908. Saving clause.
- 61-909. Exemptions.

61-901. Electric, telephone, water and gas utilities — Issuance of securities authorized — Liens — Pledges — Purposes — Terms — Supervision and control of public utilities commission. — The right of every public utility, as defined in section 61-129, Idaho Code, furnishing electric, telephone, water or gas service in the state of Idaho, to issue, assume or guarantee securities and to issue mortgages, deeds of trust or other instruments of security with respect to its property situated within the state of Idaho, is hereby subjected to the regulation and supervision of the public utilities commission of the state of Idaho, as hereinafter set forth in this act. Such public utility when authorized by order of the commission and not otherwise, may issue stocks and stock certificates and may issue, assume or guarantee bonds or other securities payable at periods of more than twelve (12) months after the date thereof, for the following purposes; for the acquisition of property; for the construction, completion, extension or improvement of its facilities; for the improvement or maintenance of its service; for the discharge or lawful refunding of its obligations; for the reimbursement of moneys actually expended for said purposes from income or from other moneys in the treasury not secured by or obtained from the issue, assumption or guarantee of securities; or for any other purpose approved by the commission, provided, however, this section shall not apply to any telephone corporation when three-fourths (3/4) or more of the total gross revenue of such corporation is derived from sources outside the state of Idaho.

History.

I.C., § 61-901, as added by 1951, ch. 143, § 1, p. 333; am. 1961, ch. 130, § 1, p. 190.

STATUTORY NOTES

Cross References.

Application of chapter to air carriers, § 61-1119.
Perfection of security interests, § 28-9-301.

Compiler's Notes.

The term "this act" refers to S.L. 1951, ch. 143, which is compiled as §§ 61-901 to 61-908.

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Utilities, §§ 173, 174.

61-902. Petition for authority — Notice and hearing — Order — Refund. — Such public utility shall, by written petition, filed with the commission and setting forth the pertinent facts involved, make application to the commission for an order authorizing the proposed issue, assumption or guarantee of securities, and the application of the proceeds therefrom for the purpose specified in such application. The commission shall, after such hearing and upon such notice as the commission may prescribe, enter its written order approving the petition and authorizing the proposed securities transactions, unless the commission, for good cause shown, shall find: That such transactions are inconsistent with the public interest and not necessary or appropriate for or consistent with the proper performance by applicant of service as a public utility; or that the purpose or purposes thereof are not permitted by this act.

History.

I.C., § 61-902, as added by 1951, ch. 143, § 1, p. 333.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1951, ch.

143, which is compiled as §§ 61-901 to 61-908.

61-903. Securities which may be issued without order of commission. — Such public utility may issue securities, other than stock or stock certificates, payable at periods of not more than twelve (12) months after date of issuance of the same, secured or unsecured, and aggregating (together with all other then outstanding notes and drafts of a maturity of one (1) year or less on which such public utility is primarily or secondarily liable) not more than five per cent (5%) of the par value or, in the case of securities having no par value, the fair market value of the other securities of the public utility then outstanding, without application to or order of the commission, but no such securities so issued shall in whole or in part be refunded by any issue of stocks, stock certificates or other securities having a maturity of more than twelve (12) months, except on application to and approval of the commission.

History.

I.C., § 61-903, as added by 1951, ch. 143, § 1, p. 333.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

61-904. Petitions — Prompt disposition — Continuances. — All applications for the issuance, assumption or guarantee of securities shall be disposed of promptly, and within thirty (30) days after petition is filed with the commission unless it is necessary, for good cause, to continue same for a longer period. Whenever such application is continued beyond thirty (30) days after the time it is filed, the commission shall enter an order making such continuance and stating fully the facts necessitating same.

History.

I.C., § 61-904, as added by 1951, ch. 143, § 1, p. 333.

61-905. Fees to be paid. — Prior to the issuance of an order and security authorization under this act, the commission shall require the payment of a fee by the applicant in the amount of one dollar (\$1.00) for each one thousand dollars (\$1,000) of the aggregate principal amount or par or stated value of the security or securities involved up to one hundred thousand dollars (\$100,000), and twenty-five cents (25¢) for each one thousand dollars (\$1,000) over one hundred thousand dollars (\$100,000) and up to one million dollars (\$1,000,000), and ten cents (10¢) for each one thousand dollars (\$1,000) over one million dollars (\$1,000,000), provided, that only twenty-five per cent (25%) of the amount of the fee determined as hereinabove specified shall be payable on such portion of any issue of securities as may be for the purpose of guaranteeing, taking over, refunding, discharging, replacing or retiring any security on which a fee was previously paid to the commission under this act; and provided further, that if the property of the public utility proposing to issue such securities shall be located in part in the state of Idaho and in part in some other state or states, only such percentage of the amount of the fee determined as hereinabove specified shall be payable as the percentage ratio of the book value of such property located in the state of Idaho shall bear to the total book value of the property of such public utility, said book values to be determined as of the close of the preceding calendar year. Provided, however, that in no event shall the fee be less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000) per application.

History.

I.C., § 61-905, as added by 1951, ch. 143, § 1, p. 333; am. 1974, ch. 88, § 1, p. 1184.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1951, ch.

143, which is compiled as §§ 61-901 to 61-908.

61-906. No liability on part of state. — No provision of this act, or any

act or deed done or performed in connection therewith, shall be construed to obligate the state of Idaho to pay or guarantee in any manner whatsoever any security authorized, issued, assumed or guaranteed under the provisions of this act.

History.

I.C., § 61-906, as added by 1951, ch. 143,
§ 1, p. 333.

STATUTORY NOTES**Compiler's Notes.**

143, which is compiled as §§ 61-901 to 61-908.
The term "this act" refers to S.L. 1951, ch. 908.

61-907. Act superior to all laws. — Wherever any provisions of the existing laws of the state of Idaho, or of any laws enacted at the thirty-first session of the legislature of the state of Idaho, are in conflict with the provisions of this act, it is the declared intention of the legislature that the provisions of this act shall control and supersede all conflicting provisions of any such laws.

History.

I.C., § 61-907, as added by 1951, ch. 143,
§ 1, p. 333.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1951, ch. 143, which is compiled as §§ 61-901 to 61-908.
The thirty-first session of the legislature of the state of Idaho met in regular session in 1951 and in an extraordinary session in January of 1952. Neither session produced any legislation in conflict with this chapter.

61-908. Saving clause. — If any part or parts of this act shall be adjudged by the courts to be unconstitutional or invalid, the same shall not affect the validity of any part or parts thereof which can be given effect without the part or parts adjudged to be unconstitutional or invalid.

History.

I.C., § 61-908, as added by 1951, ch. 143,
§ 1, p. 333.

STATUTORY NOTES**Compiler's Notes.**

143, which is compiled as §§ 61-901 to 61-908.
The term "this act" refers to S.L. 1951, ch. 908.

61-909. Exemptions. — The commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed therein, exempt any security or any class of securities for which an application is required under this chapter or any public utility or class of public utility from the provisions of this chapter if it finds that the

application thereof to such security, class of securities, public utility or class of public utility is not required by the public interest.

History.

I.C., § 61-909, as added by 1997, ch. 239,
§ 1, p. 700.

STATUTORY NOTES

Compiler's Notes.

The public utilities commission has issued

exemption procedures in PUC Procedural Order No. 26959.

CHAPTER 10

SPECIAL REGULATORY FEE

SECTION.

61-1001. Annual fees payable to commission by public utilities — Purpose.

61-1002. Expenditure — Determination — Apportionment — Appropriation. [Repealed.]

61-1003. Returns — Forms and preparation — Time of filing and first fee payment.

61-1004. Duties of commission — Fees — Determination — Maximum and minimum fees.

61-1005. Payment of fees — Time and man-

SECTION.

ner — Procedure on nonpayment.

61-1006. Motor carriers — Conditions for non-assessment of fees under this act. [Repealed.]

61-1007. Objections to fees assessed — Procedure.

61-1008. Expenditure — Public utilities commission fund — Creation — Appropriation — Disposition of surplus.

61-1009. Legislative intent. [Repealed.]

61-1001. Annual fees payable to commission by public utilities —

Purpose. — Each public utility and each railroad corporation, subject to the jurisdiction of the commission, and subject to the provisions of this act, shall pay to the commission in each year, a special regulatory fee in such amount as the commission shall find and determine to be necessary, together with the amount of all other fees paid or payable to the commission by each such public utility and railroad corporation in the current calendar year, to defray the amount to be expended by the commission for expenses in supervising and regulating the public utilities and railroad corporations subject to its jurisdiction.

History.

I.C., § 61-1001, as added by 1955, ch. 177,
§ 1, p. 362; am. 1959, ch. 80, § 1, p. 179; am.

1975, ch. 135, § 1, p. 297; am. 1981, ch. 74,
§ 1, p. 106; am. 1999, ch. 289, § 2, p. 716; am.
1999, ch. 383, § 14, p. 1047.

STATUTORY NOTES

Amendments.

This section was amended by two 1999 acts which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 289, § 2, at the end of the section, deleted the phrase "except for salaries and related payroll expenses for the commissioners" following "and motor carriers subject to its jurisdiction."

The 1999 amendment, by ch. 383, § 14, in

the first sentence, deleted "together with the fees collected by the commission from motor carriers under chapter 8, title 61, Idaho Code," following "in the current calendar year,"; and near the end of the first sentence, substituted "and railroad corporations" for "and motor carriers."

Compiler's Notes.

The term "this act" refers to S.L. 1955, ch.

177, which is compiled as §§ 61-1001, 61-1003 to 61-1005, 61-1007, and 61-1008.

RESEARCH REFERENCES

Am. Jur. — 64 Am. Jur. 2d, Public Utilities, §§ 143 to 149.

61-1002. Expenditure — Determination — Apportionment — Appropriation. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 61-1002, as added by 1955, ch. 177, § 1, p. 362; am. 1959, ch. 80, § 2, p. 179; am. 1972, ch. 148, § 4, p. 319; am. 1975, ch. 135, § 2, p. 297, was amended by S.L. 1999, ch. 383, § 15, effective July 1, 1999 and was repealed by S.L. 1999, ch. 289, § 1, effective July 1, 1999.

This section as amended by S.L. 1999, ch. 383, § 15, read: "At each regular session, the

legislature shall determine the amount of money to be expended by the commission during the next ensuing fiscal year and shall appropriate a sufficient amount from the general fund for the payment of administrative personnel costs. The remaining amount to be appropriated shall be defrayed out of fees to be paid by such public utilities and railroad corporations out of the 'Public Utilities Commission Fund,' as hereinafter provided."

61-1003. Returns — Forms and preparation — Time of filing and first fee payment. — On or before April 1st of each year, each public utility and railroad corporation subject to the jurisdiction of the commission, shall file with the commission a return verified by an officer or agent of the public utility or railroad corporation involved, showing its gross operating revenues from its intrastate utility or railroad business in Idaho for the preceding calendar year during which it carried on such intrastate utility or railroad business. Such return shall be in such form and detail as the commission may prescribe and shall be subject to audit by the commission.

The first return hereunder shall set forth the gross operating revenues derived from intrastate utility or railroad business during the calendar year 1954. The first quarter biennium installment of fees due on the 1955-1956 fiscal appropriation shall be made on or before May 15, 1955, and semiannually thereafter as provided in section 61-1005[, Idaho Code,] of this act.

History.

I.C., § 61-1003, as added by 1955, ch. 177, § 1, p. 362; am. 1959, ch. 80, § 3, p. 179.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion at the end of the section was added by the compiler to conform to the statutory citation style.

The term "this act" refers to S.L. 1955, ch. 177, which is compiled as §§ 61-1001, 61-1003 to 61-1005, 61-1007, and 61-1008.

61-1004. Duties of commission — Fees — Determination — Maximum and minimum fees. — On or before April 15th of each year the commission shall determine the proportionate assessment that all railroad corporations, and all other public utilities subject to the jurisdiction of the

commission, shall bear to the amount which will be required to defray the expense of the commission for supervision and regulation of such railroad corporations and other public utilities during the ensuing fiscal year; such determination shall be based upon a consideration of the time and expense devoted to the supervision and regulation of each such class of railroad corporations and other public utilities during the preceding calendar year, including salaries and wages of the commissioners and employees and all other necessary and lawful expenditures of the commission. Thereupon the commission shall apportion the assessment thus determined to be required of all railroad corporations and all other public utilities, to each such class thereof, respectively, in proportion to their respective gross operating revenues derived from intrastate utility business in Idaho for the preceding calendar year, except that the maximum fee payable shall not exceed:

(1) In the case of railroad corporations, one percent (1%) of the gross operating revenues derived from the intrastate utility business of each railroad corporation; and

(2) In the case of all other public utilities except pipeline corporations, three-tenths (3/10) of one percent (1%) of the gross operating revenues derived from the intrastate utility business of each such public utility.

(3) In the case of pipeline corporations, the fee payable shall be calculated to recover the commission's time and expense devoted to the safety supervision and regulation of each pipeline corporation.

(4) In no case shall the fee be less than fifty dollars (\$50.00).

(5) The commission shall make such assessment of the fees so determined by orders duly made and entered on its minutes.

History.

I.C., § 61-1004, as added by 1955, ch. 177, § 1, p. 362; am. 1959, ch. 80, § 4, p. 179; am. 1972, ch. 148, § 5, p. 319; am. 1975, ch. 135,

§ 3, p. 297; am. 1989, ch. 87, § 1, p. 150; am. 1999, ch. 289, § 3, p. 716; am. 2012, ch. 72, § 3, p. 207.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 72, inserted "except pipeline corporations" in subsection (2), added subsection (3), and renumbered the subsequent subsections accordingly.

Effective Dates.

Section 6 of S.L. 1972, ch. 148 declared an emergency. Approved March 17, 1972.

Section 4 of S.L. 2012, ch. 72 declared an emergency. Approved March 20, 2012.

61-1005. Payment of fees — Time and manner — Procedure on nonpayment. — On or before May 1st of each year, the commission shall notify each public utility and railroad corporation subject to the provisions of this act, by mail, of the amount of its fee for the ensuing fiscal year beginning July 1st, computed as in this act provided. Such fee shall be paid to the commission in equal semiannual installments on or before the 15th days of November and May in each fiscal year. If payment shall not be made on or before said respective dates, the installments so due shall bear interest at the rate of six per cent (6%) per annum until such time as the full amount of the installment shall have been paid. Upon failure, refusal or neglect of any public utility or railroad corporation to pay such fee the attorney

general shall commence an action in the name of the state to collect the same.

History.

I.C., § 61-1005, as added by 1955, ch. 177,
§ 1, p. 362; am. 1959, ch. 80, § 5, p. 179.

STATUTORY NOTES**Cross References.**

Attorney general as attorney for commis-
sion, § 61-204.

177, which is compiled as §§ 61-1001, 61-
1003 to 61-1005, 61-1007, and 61-1008.

Compiler's Notes.

The term "this act" refers to S.L. 1955, ch.

**61-1006. Motor carriers — Conditions for non-assessment of fees
under this act. [Repealed.]**

STATUTORY NOTES**Compiler's Notes.**

This section, which comprised I.C., § 61-

1006, as added by 1955, ch. 177, § 1, p. 362,
was repealed by section 6 of S.L. 1959, ch. 80.

61-1007. Objections to fees assessed — Procedure. — If any public utility or railroad corporation subject to the provisions of this act claims the assessment made against it is erroneous, excessive, unlawful or invalid, it shall on or before the time specified for payment of the first installment of the assessment made against it, file with the commission its written objections to such assessment, setting out specifically the grounds upon which it claims said assessment to be erroneous, excessive, unlawful or invalid. The commission, upon receipt of any such objection, and after ten (10) days' notice in writing to the objector, shall proceed to hold a hearing upon such objections within twenty (20) days after the date of such notice. Within twenty (20) days after such hearing, the commission shall make and enter its findings in its minutes and issue its order in accordance with said findings and forthwith transmit the same to the objector by registered mail. The commission shall refund any overpayment of any fees prescribed by this act and all claims for such refunds against the "Public Utilities Commission Fund" created by this act, shall be examined by the commission and certified by the president of the commission to the state controller, who shall, upon the approval of the board of examiners, draw his warrant against said "Public Utilities Commission Fund" for all such claims for refunds so allowed and approved.

History.

I.C., § 61-1007, as added by 1955, ch. 177,

§ 1, p. 362; am. 1959, ch. 80, § 7, p. 179; am.
1994, ch. 180, § 148, p. 420.

STATUTORY NOTES

Cross References.

Public utilities commission fund, § 61-1008.

State board of examiners, § 67-2001 et seq.

State controller, § 67-1001 et seq.

Compiler's Notes.

The term "this act" refers to S.L. 1955, ch. 177, which is compiled as §§ 61-1001, 61-1003 to 61-1005, 61-1007, and 61-1008.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided

that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 148 of S.L. 1994, ch 180 became effective January 2, 1995.

61-1008. Expenditure — Public utilities commission fund — Creation — Appropriation — Disposition of surplus. — (1) At each regular session, the legislature shall determine the amount of money that may be expended by the public utilities commission during the next ensuing fiscal year.

(2) The state treasurer shall be custodian of the "public utilities commission fund," into which shall be paid and deposited all funds accruing or received under any and all provisions of this chapter, and all fees, licenses, charges, assessments, fines and penalties, now or hereafter payable to, collected or recovered by the commission under any other law of this state, and all funds otherwise appropriated or made available to said fund. All moneys from whatever source accruing to and received into said fund are hereby appropriated, within the limits of funds determined therefor by the legislature, for the payment of the administrative and maintenance expenses of the commission, including salaries and wages of the commissioners and employees, travel, supplies, equipment, fixed charges, refunds of fees and all other necessary expenses of the commission, not otherwise provided for. Moneys shall be paid out of the public utilities commission fund by the state treasurer only upon claim vouchers prepared and approved by the commission, certified by the president of the commission to the state controller who, after review as provided by law, shall draw his warrant against the public utilities commission fund for all such claims.

(3) Any moneys remaining in the public utilities commission fund at the end of any fiscal year, shall be retained in said fund for the use of the commission for the purposes specified in this chapter. Remaining funds shall be credited ratably by the commission to the respective railroad corporations and other public utilities according to the respective portions of such fees determined hereunder to be assessable against each such railroad corporation and other public utility, respectively, for the ensuing fiscal year. The respective fee assessed against each railroad corporation and public utility for such ensuing fiscal year shall be correspondingly reduced; provided that, only moneys paid under the provisions of this chapter by railroad corporations and other public utilities shall be considered in determining the surplus to be so credited by the commission.

History.

I.C., § 61-1008, as added by 1955, ch. 177,

§ 1, p. 362; am. 1959, ch. 80, § 8, p. 179; am. 1994, ch. 180, § 149, p. 420; am. 1999, ch.

289, § 4, p. 716; am. 1999, ch. 383, § 16, p. 1051; am. 2003, ch. 32, § 32, p. 115.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Amendments.

This section was amended by two 1999 acts which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 289, § 4, added subsection (1), added the subsection designators (2) and (3), substituted "the public utilities commission fund" for "said Public Utilities Commission Fund" throughout the section, and made minor punctuation changes throughout the section; in subsection (2), deleted "a fund, which is hereby created, to be known as" following "custodian of", substituted "this chapter" for "this act", and substituted ". Moneys" for "; moneys"; in subsection (3) deleted "collected under this act" following "Any moneys", divided the former first sentence of subsection (3) into the current first and second sentences by substituting "in this chapter. Remaining funds shall" for "in this

act and shall", deleted "subject to the provisions of this act" following "other public utilities", and substituted "against each railroad corporation and public utility"; for "against each of them, respectively," in the last sentence.

The 1999 amendment, by ch. 383, § 16, in the first sentence, deleted "including fees collected from motor carriers under the provisions of title 61, chapter 8, Idaho Code," and substituted "this chapter" for "this act" throughout.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995], if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 149 of S.L. 1994, ch. 180 became effective January 2, 1995.

61-1009. Legislative intent. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 61-1009, as added by 1955, ch. 177, § 1, p. 362; am. 1959, ch. 80, § 9, p. 179; am. 1975, ch. 135, § 4, p. 297, was amended by S.L. 1999, ch. 383, § 17, effective July 1, 1999, and was repealed by S.L. 1999, ch. 289, § 1, effective July 1, 1999.

This section as amended by S.L. 1999, ch. 383, § 17, read: "The legislature hereby de-

clares that the purpose and intent of this chapter is to provide that expenses for personnel costs for administration of the commission shall be appropriated from the general fund and that the remaining expenses for the supervision and regulation of railroad corporations and other public utilities shall be appropriated from fees imposed upon public utilities and railroad corporations so supervised and regulated."

CHAPTER 11

AIR CARRIER ACT

SECTION.

- 61-1101. Air carrier act.
- 61-1102. Definitions — Exclusions.
- 61-1103. Operational rights.
- 61-1104. Certificate of public convenience and necessity required — Public utility commission.
- 61-1105. Application — Form and proof.
- 61-1106. Fee.
- 61-1107. Granting and denying certificates — Hearing.

SECTION.

- 61-1108. Revocation and suspension — Notice and hearing.
- 61-1109. Unlawful practice — Consolidation and merger.
- 61-1110. Consolidation, merger, purchase, lease, operating contract, acquisition — Requirements.
- 61-1111. Unauthorized controlling interest.
- 61-1112. Combining certificates.
- 61-1113. Operating rights.

SECTION.

61-1114. Cease and desist — Enforcement.
61-1115. Insurance requirement.
61-1116. Commission's power to fix rates and
prescribe rules.

SECTION.

61-1117. Federal regulation and control.
61-1118. Administrative fees.
61-1119. Issuance of securities.

61-1101. Air carrier act. — This act shall be known as the Idaho Air Carrier Act.

History.

1969, ch. 197, § 1, p. 574.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1969, ch.

197, which is compiled as §§ 61-1101 to 61-1119.

RESEARCH REFERENCES

Am. Jur. — 8 Am. Jur. 2d, Aviation, § 1 et seq.

61-1102. Definitions — Exclusions. — a. The term "person" when used in this act means any individual, firm, copartnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

b. The term "certificate" means a certificate of public convenience and necessity issued under this act to any air carrier.

c. The term "air carrier" means any person owning, controlling or operating aircraft as a common carrier of passengers for compensation on a scheduled basis between any two (2) intermediate or terminal points within the state of Idaho; provided, however, that this definition shall not be construed to prevent the carriage of passengers or property for hire by an air carrier operating in interstate commerce under certification by the civil aeronautics board.

d. The term "common air carrier" means any person which holds itself out to the general public to engage in the transportation by aircraft in commerce of passengers or property for compensation.

e. The term "aircraft" shall mean any machine heavier than air supported for flight by dynamic action of air upon its surfaces, and which is used for the transportation of persons or property in the air.

f. The term "commission" means the Idaho Public Utilities Commission.

g. The term "transportation" to which this act applies includes all aircraft operated by, for, or in the interest of any air carrier irrespective of ownership or contract, express or implied, together with all services, facilities and property furnished, operated or controlled by any such air carrier or carriers and used in the transportation of passengers and/or property in commerce in the state of Idaho.

h. Nothing in this act shall be construed to cover or include aircraft or transportation used solely in connection with:

1. The transportation or handling of United States mail;
2. Interstate or foreign commerce;

3. Instruction;
 4. Charter service on a nonscheduled basis;
 5. Aerial application of agricultural chemicals;
 6. Air passenger carrier certificated by the civil aeronautics board in interstate commerce; or,
 7. The transportation of persons or property on a contractual basis for federal, state, or local governments.
- i. The term "director" means the director of the Idaho transportation department.

History.

1969, ch. 197, § 2, p. 574; am. 1974, ch. 12,
§ 115, p. 61.

STATUTORY NOTES**Cross References.**

Director of department of transportation,
§ 40-503.

197, which is compiled as §§ 61-1101 to 61-
1119.

Compiler's Notes.

The term "this act" refers to S.L. 1969, ch.

61-1103. Operational rights. — No air carrier shall operate aircraft except in accordance with the provisions of this act.

History.

1969, ch. 197, § 3, p. 574.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1969, ch.

197, which is compiled as §§ 61-1101 to 61-
1119.

61-1104. Certificate of public convenience and necessity required — Public utility commission. — It shall be unlawful for any air carrier, as the term is defined in this act, to operate any aircraft in transportation without having first obtained from the commission a certificate of public convenience and necessity covering such operation.

A certificate may be issued to a qualified applicant authorizing the whole or any part of his operations covered by the application made to the commission in accordance with the provisions of this act, if it is found that the applicant is fit, willing and able properly to perform the service proposed and to conform to the provisions of this act and the requirements, rules and regulations of the commission thereunder, and that the proposed service, to the extent authorized by the certificate is, or will be, required by the present or future public convenience and necessity.

In considering the public convenience and necessity, the commission shall in consultation with the director of the Idaho transportation department, prior to the issuance of a certificate, consider the effect of such proposed air carrier operation upon the operations of any authorized air carrier then operating over the routes or in the territory sought. The mere existence of an

air carrier in the territory sought who possesses authority similar to that sought by the applicant shall not be sufficient cause to deny the issuance of the certificate.

In awarding certificates of public convenience and necessity, the commission shall take into consideration the business experience of the particular air carrier in the field of air operations, the financial stability of the carrier, the insurance coverage of the carrier, type of aircraft which the carrier would employ, proposed routes and minimum schedules to be established, whether the carrier could economically give adequate service to the communities involved, the necessity for the service, and any other factors which may affect the public interest.

History.

1969, ch. 197, § 4, p. 574; am. 1974, ch. 12, § 116, p. 61; am. 1974, ch. 236, § 1, p. 1599.

STATUTORY NOTES

Cross References.

Director of department of transportation, § 40-503.

197, which is compiled as §§ 61-1101 to 61-1119.

Compiler's Notes.

The term "this act" refers to S.L. 1969, ch.

JUDICIAL DECISIONS

Determination of Public Convenience and Necessity.

In granting an application for certificate of public convenience and necessity to an airline, consideration was given to the impact this would have on another airline servicing the same route, and such consideration fulfilled the commission's statutory obligation.

Key Transp., Inc. v. Trans Magic Airlines Corp., 96 Idaho 110, 524 P.2d 1338 (1974).

The commission's consideration of the need for a sound intrastate air network was a correct statewide view of "public convenience and necessity." Key Transp., Inc. v. Trans Magic Airlines Corp., 96 Idaho 110, 524 P.2d 1338 (1974).

RESEARCH REFERENCES

A.L.R. — Validity of municipal regulation of aircraft flight paths or altitudes. 36 A.L.R.3d 1314.

61-1105. Application — Form and proof. — An applicant shall submit his written verified application to the commission, and a duplicate application to the director. The application shall be in such form and contain such information and be accompanied by proof of service upon all air carriers with which the proposed service is likely to compete and such other interested parties as the commission requires.

History.

1969, ch. 197, § 5, p. 574; am. 1974, ch. 12, § 117, p. 61.

61-1106. Fee. — Each application for a certificate of public convenience

and necessity made under the provisions of this act shall be accompanied by a fee of one hundred fifty dollars (\$150).

History.

1969, ch. 197, § 6, p. 574.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1969, ch.

197, which is compiled as §§ 61-1101 to 61-1119.

61-1107. Granting and denying certificates — Hearing. — The commission may, after consultation with the director, and with or without hearing, issue a temporary or permanent certificate, except that a certificate may not be issued without a hearing over the formal objection of a person or party in possession with standing to object. The commission, after consultation with the director, may deny the application for a temporary or permanent certificate in whole or part, with or without hearing, except that such denial may not be ordered without a hearing over the formal objection of the applicant. The commission, after consultation with the director, may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity requires.

History.

1969, ch. 197, § 7, p. 574; am. 1974, ch. 12, § 118, p. 61.

61-1108. Revocation and suspension — Notice and hearing. — The rights conferred by a certificate issued pursuant to this act may not be revoked or suspended without a finding by the commission after consultation with the director, and through notice and hearing, that the holder has abandoned such rights, or is no longer fit, willing or able to perform all or part of the certificated services, or to conform to the law and to the rules and regulations of the commission.

History.

1969, ch. 197, § 8, p. 574; am. 1974, ch. 12, § 119, p. 61.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1969, ch.

197, which is compiled as §§ 61-1101 to 61-1119.

61-1109. Unlawful practice — Consolidation and merger. — It shall be unlawful, unless authorized by order of the commission as provided in this act:

a. For two (2) or more air carriers, or for any air carrier and any other common carrier, to consolidate or merge their properties, or any part thereof, into one (1) person for the ownership, management or operation of the properties theretofore in separate ownerships.

b. For any air carrier, or any person controlling an air carrier or any other common carrier, to purchase, lease or contract to operate the properties, or any substantial part thereof, of any air carrier.

c. For any air carrier, or any person controlling an air carrier or any other common carrier, to acquire control of any air carrier in any manner whatsoever.

History.

1969, ch. 197, § 9, p. 574.

STATUTORY NOTES

Compiler's Notes.

197, which is compiled as §§ 61-1101 to 61-1119.
The term "this act" refers to S.L. 1969, ch. 1119.

61-1110. Consolidation, merger, purchase, lease, operating contract, acquisition — Requirements. — Any person seeking authorization for a consolidation, merger, purchase, lease, operating contract or acquisition of control shall file an application with the commission and a duplicate with the director, and thereupon the commission shall notify all persons known to have a substantial interest in the proceedings of the time and place of the public hearing. The commission, after consultation with the director, shall by order authorize such consolidation, merger, purchase, lease, operating contract or acquisition of control upon such terms and conditions as it shall find to be just and reasonable, after hearing, if the consolidation, merger, purchase, lease, operating contract or acquisition of control is in the public interest. The commission shall not authorize, however, any consolidation, merger, purchase, lease, operating contract or acquisition of control which would result in creating a monopoly or monopolies and thereby restrain competition, or jeopardize another air carrier not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control. In any case in which the commission, after consultation with the director, determines that the transaction which is the subject of the application does not affect the control of an air carrier, does not result in creating a monopoly or monopolies, and does not tend to restrain competition, and determines that no person disclosing a substantial interest is currently requesting a hearing, the commission, after notice of its intention to dispose of such application without a hearing, may determine that the public interest does not require a hearing and may by order authorize or not authorize such transaction.

History.

1969, ch. 197, § 10, p. 574; am. 1974, ch. 12,
§ 120, p. 61.

61-1111. Unauthorized controlling interest. — It is unlawful, unless such relationship has been authorized by order of the commission:

a. For any air carrier to have and retain an officer or director who is an officer, director, or member, or who as a stockholder holds a controlling interest, in any other common carrier.

b. For any air carrier, knowingly and willingly, to have and retain an officer or director who has a representative or nominee who represents such officer, director or member as an officer, director, or member as a stockholder holding a controlling interest, in any other common carrier.

c. For any person who is an officer or director of an air carrier to hold the position of officer, director or member, or to have a stockholder holding a controlling interest, or to have a representative or nominee who represents such a person as an officer, director, or member, or as a stockholder holding a controlling interest in any common carrier.

History.

1969, ch. 197, § 11, p. 574.

61-1112. Combining certificates. — Without the express authorization of the commission after consultation with the director, and after a hearing, no certificate of public convenience or necessity issued to one (1) air carrier under the provisions of this act shall be combined, united, or consolidated with another such certificate issued to or possessed by another such carrier, so as to permit through service between any point or points served by the one (1) carrier on the one hand, and the point or points served by another such carrier, on the other hand.

History.

1969, ch. 197, § 12, p. 574; am. 1974, ch. 12, § 121, p. 61.

STATUTORY NOTES

Compiler's Notes.

197, which is compiled as §§ 61-1101 to 61-1119.

The term "this act" refers to S.L. 1969, ch.

61-1113. Operating rights. — Unless prohibited by the terms and conditions of any certificate that may be involved, any one (1) air carrier may establish through routes and joint rates, charges, and classifications between any and all points served by it under any and all certificates or operating rights issued to or possessed by it.

History.

1969, ch. 197, § 13, p. 574.

61-1114. Cease and desist — Enforcement. — When the commission, upon complaint or its own motion, has reason to believe that any aircraft is being operated without a certificate of public convenience and necessity as required by this act, or that this act is being violated, or that an air carrier is engaged in any other illegal activity, the commission shall investigate such activity and may, after consultation with the director, and after a hearing, make its order requiring the owner or operator of the aircraft to cease and desist from any such unlawful activity. The commission shall enforce compliance with such order under the powers vested in the commission by law, including, but not limited to, the provisions of chapter 7, title 61, Idaho Code.

History.

1969, ch. 197, § 14, p. 574; am. 1970, ch. 6,
§ 1, p. 10; am. 1974, ch. 12, § 122, p. 61.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1969, ch.

197, which is compiled as §§ 61-1101 to 61-1119.

61-1115. Insurance requirement. — The commission shall require all air carriers to procure and maintain a minimum amount of insurance in such amounts as the commission may determine. The commission may, upon its own motion or upon application of any interested party, and after a hearing, require any air carrier to procure and maintain additional insurance in such amounts and upon such terms as the commission may determine; provided, however, that such additional insurance required by the commission is available.

History.

1969, ch. 197, § 15, p. 574.

RESEARCH REFERENCES

A.L.R. — Helicopter accidents. 35 A.L.R.3d 707.

Property insurance on aircraft; risks and losses covered. 48 A.L.R.3d 1120.

Construction of provision of aviation liabil-

ity policy which requires pilot of insured aircraft to have appropriate license or certification. 72 A.L.R.3d 525.

Risk and causes of loss covered or excluded by aviation liability policy. 86 A.L.R.3d 118.

61-1116. Commission's power to fix rates and prescribe rules. — The commission is hereby vested with the power and authority, and it is hereby made its duty, after consultation with the director, to fix just, fair, reasonable and sufficient rates, fares and charges and classifications, and to alter and amend the same, and to prescribe such rules and regulations for air carriers as may be necessary to provide for adequate service and safety of operations, and to require the filing of such reports and other data with the commission as may be necessary, and to adopt such other rules and regulations as may be necessary to govern the relationship between such air carriers and the traveling and shipping public. Such rules and regulations shall be adopted and promulgated by general order of the commission.

History.

1969, ch. 197, § 16, p. 574; am. 1974, ch. 12,
§ 123, p. 61.

STATUTORY NOTES**Effective Dates.**

Section 124 of S.L. 1974, ch. 12 provided

that the act should take effect on and after
July 1, 1974.

61-1117. Federal regulation and control. — This act recognizes the authority of the federal government to regulate and control safety factors in the operation of aircraft and the use of air space.

History.

1969, ch. 197, § 17, p. 574.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1969, ch.

197, which is compiled as §§ 61-1101 to 61-1119.

RESEARCH REFERENCES

A.L.R. — Construction and effect of 49 U.S.C. § 1403 governing recordation of ownership, conveyances and encumbrances on aircraft. 22 A.L.R.3d 1270.

Construction and application of § 90a(i-1) of Federal Aviation Act of 1958, as amended (49 U.S.C. § 1472(i-1)), punishing aircraft piracy, interference with flight crew members and certain other crimes aboard aircraft in flight. 10 A.L.R. Fed. 844.

Validity under U.S. Constitution of pre-flight procedures used at airports to prevent hijacking of aircraft. 14 A.L.R. Fed. 286.

What constitutes "order" of Civil Aeronautics Board or of administrator of Federal Aviation Agency subject to judicial review, or what orders are subject to such review under § 1006(a) of Federal Aviation Act (U.S.C., tit. 49, § 1486(a)). 14 A.L.R. Fed. 725.

Construction and application of Federal Aviation Act provision (49 U.S.C. § 1487(a)) for judicial enforcement by "any party in interest" of provision (49 U.S.C. § 1371(2)) prohibiting noncertificated carriers from engaging in air transportation. 19 A.L.R. Fed. 951.

61-1118. Administrative fees. — The commission shall charge and collect the following fees and none other, in the administration of this act:

Applications for a certificate shall be accompanied by an application fee of.....	\$150.00
Application for transfer of a certificate.....	150.00
Application for the assignment of a certificate.....	150.00
Application for the issuance of a duplicate certificate.....	25.00
Application for certificate reinstatement.....	150.00
Application for certificate suspension.....	50.00
Annual registration of certificate authority.....	100.00
Application for a temporary certificate.....	150.00

The fees as provided above shall be paid to the state treasurer and shall be credited to the public utilities commission fund.

History.

1969, ch. 197, § 18, p. 574; am. 1999, ch. 383, § 18, p. 1051.

STATUTORY NOTES

Cross References.

Public utilities commission fund, § 61-1008.
State treasurer, § 67-1201 et seq.

Compiler's Notes.

The term "this act" refers to S.L. 1969, ch. 197, which is compiled as §§ 61-1101 to 61-1119.

61-1119. Issuance of securities. — The provisions of chapter 9, title 61, Idaho Code, shall be applicable to regulation under this act.

History.

1969, ch. 197, § 19, p. 574.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1969, ch. 197, which is compiled as §§ 61-1101 to 61-1119.

Section 20 of S.L. 1969, ch. 197 read: "Each air carrier, as defined in this act, which shall have been in bona fide operation on or prior to January 1, 1969, over the route or routes or within the territory for which application has been made and has so operated since that time, shall file with the commission its verified statement showing in detail its air carrier operations on or prior to January 1, 1969. Such statement of prior operations as an air carrier shall contain such information as the

commission may require, and shall be filed with the commission by March 15, 1969. The commission shall thereupon issue a temporary or permanent certificate of public convenience and necessity to each of such air carriers in operation on January 1, 1969. Such temporary or permanent certificate shall be limited to the scope of such prior air carrier's operation, and the commission shall have the power to hold such hearings as may be necessary to determine such scope of authority."

Effective Dates.

Section 21 of S.L. 1969, ch. 197 declared an emergency. Approved March 21, 1969.

CHAPTER 12

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

SECTION.

- 61-1201. Agreement for state participation in the Pacific Northwest Electric Power and Conservation Planning Council.
- 61-1202. Creation — Qualifications of council members.
- 61-1203. Term of office of council members — Filling of vacancies.

SECTION.

- 61-1204. Salaries and expenses of council members.
- 61-1205. Office — Technical assistance.
- 61-1206. Annual reports.
- 61-1207. Legislative intent.

61-1201. Agreement for state participation in the Pacific Northwest Electric Power and Conservation Planning Council. — The state of Idaho agrees to participate in the formation of the "Pacific Northwest Electric Power and Conservation Planning Council," created pursuant to the Pacific Northwest electric power planning and conservation act. Nothing in this agreement shall be construed to alter, diminish or abridge the rights of the state of Idaho and its citizens with respect to any water or water related right and those relating to the regulation of the energy industry.

History.

I.C., § 61-1201, as added by 1981, ch. 351, § 1, p. 724.

STATUTORY NOTES

Federal References.

The Pacific Northwest electric power planning and conservation act, referred to in this section, is compiled as 16 U.S.C.S. §§ 839 to 839h.

Compiler's Notes.

For more on the Northwest power and conservation council, see <http://www.nwccouncil.org>.

61-1202. Creation — Qualifications of council members. — There is hereby created in the office of the governor, a state office to be known and

designated as "Pacific Northwest Electric Power and Conservation Planning Council Member," as provided in the Pacific Northwest Electric Power Planning and Conservation Act. The governor, with the advice and consent of the senate, shall appoint two (2) persons to the council to undertake the functions and duties of members of the council as specified in that act and appropriate state law. Council members may not hold another public office during their term as council members. They must be qualified electors of the state. Council members shall be appointed on the basis of their experience and education in matters pertaining to the economic, legal, social and political aspects of energy production and distribution, fish and wildlife propagation and protection, and the use, distribution, and protection of state water.

History.

I.C., § 61-1202, as added by 1981, ch. 351,
§ 1, p. 724.

STATUTORY NOTES**Federal References.**

The Pacific Northwest Electric Power Planning and Conservation Act, referred to in this

section, is compiled as 16 U.S.C.S. §§ 839 to 839h.

61-1203. Term of office of council members — Filling of vacancies. — (1) Unless removed at the governor's pleasure, each member appointed to the council shall serve for a term of three (3) years, except that, with respect to members initially appointed, the governor shall designate one (1) member to serve a term of two (2) years and one (1) member to serve a term of three (3) years. Absent removal by the governor, terms shall commence and end on January 15.

(2) Initial appointments to the council shall be made within thirty (30) days of the effective date of this chapter. A vacancy on the council shall be filled for the unexpired term by the governor, with the advice and consent of the senate. If such appointment is made during the recess of the legislature, it shall be subject to confirmation during its next ensuing session.

(3) Each member shall serve until a successor is appointed and qualified.

History.

I.C., § 61-1203, as added by 1981, ch. 351,
§ 1, p. 724.

STATUTORY NOTES**Compiler's Notes.**

The phrase "the effective date of this chapter" in subsection (2) refers to the effective

date of S.L. 1981, ch. 351, which was effective April 7, 1981.

61-1204. Salaries and expenses of council members. — The annual salary of each council member shall be set by the governor. All expenses incurred by a council member pursuant to the provisions of this chapter, including the actual and necessary traveling and other expenses and disbursements incurred while on business of the council, shall be paid from

the funds appropriated for the use of the council as provided by federal law. Salary and expense monies shall be paid from federal appropriations as provided for in the pacific northwest electric power planning and conservation act.

History.

I.C., § 61-1204, as added by 1981, ch. 351,
§ 1, p. 724.

STATUTORY NOTES

Federal References.

The pacific northwest electric power planning and conservation act, referred to in this

section, is compiled as 16 U.S.C.S. §§ 839 to 839h.

61-1205. Office — Technical assistance. — (1) The office of the council members shall be in Ada county. The department of administration shall furnish suitable office space for council members and staff and the department shall be reimbursed for such office space at the rates applicable to state agencies.

(2) Subject to available resources, state agencies may provide technical assistance to council members upon request. State agencies providing technical assistance shall be reimbursed in full for all costs incurred in providing such assistance.

History.

I.C., § 61-1205, as added by 1981, ch. 351,
§ 1, p. 724; am. 2001, ch. 183, § 27, p. 613.

STATUTORY NOTES

Cross References.

Department of administration, § 67-5701 et seq.

61-1206. Annual reports. — The members of the council shall make and submit on or before the 1st day of January of each year a report to the governor and the legislature that describes the activities of the council. The report shall describe the potential effects the council's activities will have on economic, environmental, natural resource, energy and water concerns of the state.

History.

I.C., § 61-1206, as added by 1981, ch. 351,
§ 1, p. 724.

61-1207. Legislative intent. — The legislature may, by concurrent resolution, direct to the Idaho council members a statement reflecting legislative intent and concern relative to any actions or activities undertaken or sought to be undertaken by the council.

History.

I.C., § 61-1207, as added by 1981, ch. 351,
§ 1, p. 724.

STATUTORY NOTES**Effective Dates.**

Section 2 of S.L. 1981, ch. 351 declared an
emergency. Approved April 7, 1981.

CHAPTER 13**TELECOMMUNICATIONS RELAY SERVICES****SECTION.**

61-1301. Legislative findings and intent.

61-1302. Definitions.

61-1303. Administrator's contract — TRS
provider's contract — Require-
ments.

SECTION.

61-1304. Telecommunications relay services
fund.

61-1305. Participation in program.

61-1306. Powers and duties of the commis-
sion.

61-1301. Legislative findings and intent. — Title IV of the Americans with disabilities act, public law 101-336, requires that on or before July 26, 1993, telephone corporations providing interstate or intrastate telephone services provide telecommunications relay services (TRS) for individuals who are hearing-impaired or speech-impaired that will allow them to engage in telephone communication in a manner functionally equivalent to that of individuals without hearing or speech impairments. The legislature finds that it is in the public interest to provide for the appointment of a TRS administrator who can coordinate TRS services and assist the state in applying for certification of the state TRS program by the federal deadline of October 1, 1992. This certification, if approved by the federal communications commission, will allow every telephone corporation providing intrastate service in Idaho to meet its obligations under federal law by participating in the state telecommunications relay services program.

History.

I.C., § 61-1301, as added by 1992, ch. 148,
§ 1, p. 443.

STATUTORY NOTES**Federal References.**

Title IV of the Americans with disabilities act, referred to in this section, is codified as 47 U.S.C.S. §§ 152(b), 221(b), 225 and 611.

Compiler's Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

RESEARCH REFERENCES

A.L.R. — Radio paging services, state regulations. 44 A.L.R.4th 216.

61-1302. Definitions. — In this chapter:

(1) "Administrator" means the person with whom the Idaho public

utilities commission contracts to administer the program for delivery of telecommunications relay services.

(2) "Commission" means the Idaho public utilities commission.

(3) "Communications impaired" mean individuals who are hearing-impaired or speech-impaired as defined in title IV, section 401, Americans with disabilities act of 1990, public law 101-336, 104 stat. 327, 336-69 (47 U.S.C. section 225) or regulations promulgated pursuant thereto.

(4) "Local exchange company" means a telephone corporation which provides access lines to residential and business customers with the associated transmission of two (2) way interactive switched voice communication within a geographic area where basic local exchange rates rather than message telecommunications service rates apply.

(5) "Message telecommunications service" shall have the meaning prescribed in section 62-603(6) [62-603(8)], Idaho Code.

(6) "Program" means the effort directed by the administrator pursuant to this chapter to establish and operate an Idaho system to provide telecommunications relay services.

(7) "Telephone corporation" shall have the meaning prescribed in section 62-603(10) [62-603(14)], Idaho Code.

(8) "Telecommunications relay services (TRS)" mean services through which a communications impaired person, using specialized telecommunications equipment, may send and receive messages to and from a noncommunications impaired person whose telephone is not equipped with specialized telecommunications equipment and through which a noncommunications impaired person may, by using voice communication, send and receive messages to and from a communications impaired person.

History.

I.C., § 61-1302, as added by 1992, ch. 148,
§ 1, p. 443.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertions in subsections (5) and (7) were added by the compiler to account for the amendment of § 62-603 by S.L. 1997, ch. 192.

The reference and abbreviation enclosed in parentheses so appeared in the law as enacted.

61-1303. Administrator's contract — TRS provider's contract — Requirements. —

(1)(a) The commission shall contract with a qualified person to administer the program in accordance with the purposes of this chapter and to secure certification of the program by the federal communications commission. The program administrator shall not be an employee or officer of the state of Idaho, but shall have the capacity to sue and be sued with reference to administration of the program, except as hereinafter provided.

(b) The administrator's contract shall require, but shall not be limited to, the following:

(i) that the administrator consult with, and receive recommendations

from, the advisory committee, or a representative thereof, appointed by the commission pursuant to section 61-1306, Idaho Code;

(ii) that the administrator post a fidelity bond in such amount as may be required by the commission;

(iii) that the administrator meet timetables necessary to secure certification of the program by the federal communications commission;

(iv) that the administrator, upon such terms as to the commission may seem reasonable, issue a request for proposals to providers of message relay services requesting responsive proposals to provide such services as may be necessary for the program;

(v) that the administrator evaluate the responsive proposals and recommend one (1) or more proposals to the commission for its review and approval;

(vi) that the administrator enter into a contract with the provider of TRS, which contract and provider have been approved by the commission;

(vii) that the administrator consult with the Idaho state council for the deaf and hard of hearing concerning program design and delivery of message relay services to communications impaired persons within the state of Idaho; and

(viii) that the administrator perform such other services concerning the program as may be deemed reasonable and necessary by the commission.

(2) In addition to such other contractual terms as may be necessary or desirable, the administrator shall require, under the terms of the contract with the provider of TRS, that:

(a) The system be available statewide for operation seven (7) days a week, twenty-four (24) hours per day, three hundred sixty-five (365) days per year, for intrastate calls;

(b) The system relay all messages promptly and accurately;

(c) The provider preserve the confidentiality of all TRS communications, including the fact and contents of the communications; and

(d) The system make available to communications impaired individuals intrastate telecommunications relay services in the state of Idaho that meet or exceed the requirements of applicable regulations of the federal communications commission and which otherwise comply with all applicable state and federal laws.

(3) Except in cases of criminal or willful misconduct, gross negligence or willful violation of the provisions of this chapter, neither the commission, the administrator, the provider of TRS, nor the providers of underlying communications services shall be liable for any claims, actions, damages, or causes of action arising out of or resulting from the establishment, participation in, or operation of TRS.

(4) The administrator may receive contributions, gifts and grants on behalf of and in aid of the program. Such contributions, gifts and grants shall be deposited in the Idaho telecommunications relay services fund established pursuant to section 61-1304, Idaho Code.

History.

I.C., § 61-1303, as added by 1992, ch. 148,
§ 1, p. 443.

STATUTORY NOTES**Cross References.**

Idaho state council for the deaf and hard of
hearing, § 67-7301 et seq.

61-1304. Telecommunications relay services fund. — (1) The administrator shall establish a fund for the provision of relay services under this chapter, not including customer premises equipment, to be known and designated as the Idaho telecommunications relay services fund, in such depository and under such regulations as shall be established by the commission, to which shall be credited:

(a) All monetary contributions, gifts and grants received by the administrator;

(b) All charges billed and collected pursuant to section 61-1305, Idaho Code.

(2) No funds derived from charges billed and collected pursuant to section 61-1305, Idaho Code, shall be used for the acquisition of end user text telephones.

(3) All moneys deposited in the telecommunications relay [services] fund shall be expended for the purpose of defraying the expenses, debts and costs incurred in carrying out the provisions of this chapter, and for defraying administrative expenses of the administrator, including necessary expenses for consultants to the administrator, expenses for travel, supplies and equipment and other expenses of the administrator necessary for the implementation of the provisions of this chapter. All moneys credited to the telecommunications relay services fund may be expended by the administrator at such times and in such manner as may be authorized by the commission.

History.

I.C., § 61-1304, as added by 1992, ch. 148,
§ 1, p. 443.

STATUTORY NOTES**Compiler's Notes.**

The bracketed insertion in subsection (3) was added by the compiler to supply the correct name of the referenced fund.

61-1305. Participation in program. — (1) All telephone corporations providing basic local exchange service within the state of Idaho and all telephone corporations providing intrastate message telecommunications service within the state of Idaho, including those otherwise exempt from the jurisdiction of the commission pursuant to section 61-104, Idaho Code, and those providing local exchange services or message telecommunications services pursuant to the telecommunications act of 1988, chapter 6, title 62, Idaho Code, shall except as provided in subsection (2) of this section, provide

TRS in accordance with the program established by the commission, and shall pay into the telecommunications relay services fund such sums as may represent the telephone corporation's share of the cost of the program, based upon an allocation methodology duly adopted by the commission in accordance with its rulemaking procedures.

(2) The commission shall permit a telephone corporation to provide telecommunications relay services to its customers by a TRS provider other than the provider approved by the commission and shall waive the telephone corporation's obligation to participate in the program if the commission finds, upon application by a telephone corporation, that the following facts exist:

(a) The telephone corporation will continue to meet its obligation to its Idaho customers in accordance with the standards set forth in the Americans with disabilities act; and

(b) The nonparticipation of such telephone corporation will not substantially impair the operation or provision of TRS pursuant to the program adopted by the commission.

(3) Each telephone corporation subject in whole or in part to the commission's ratemaking authority may apply to the commission for authority to increase its rates and charges in an amount not to exceed its payments to the telecommunications relay services fund pursuant to this chapter or the costs it incurs in providing TRS through an alternative TRS provider as authorized by the commission pursuant to subsection (2) of this section. Such applications shall plainly state the amount of the proposed increase, its manner of calculation, and the proposed recovery method, but shall not require a full cost-of-service filing or general ratemaking presentation. The commission shall promptly consider and act upon such applications.

History.

I.C., § 61-1305, as added by 1992, ch. 148,
§ 1, p. 443.

STATUTORY NOTES

Federal References.

The Americans with disabilities act, referred to in paragraph (2)(a), is generally

codified as 42 U.S.C.S. § 12101 et seq. See specifically 47 U.S.C.S. § 225.

61-1306. Powers and duties of the commission. — The commission shall promulgate such rules, policies and procedures as may be necessary to govern administration of the program and ensure that the program is in compliance with any applicable federal laws or regulations including, but not limited to, regulations providing for:

(1) An advisory committee of the telephone industry to assist the administrator;

(2) Consultation by the administrator with the Idaho state council for the deaf and hard of hearing;

(3) Periodic recontracting with and auditing of the administrator and TRS provider;

(4) Timetables for the administrator's duties that will require the admin-

istrator to meet the deadline of October 1, 1992, for applying for certification of the state TRS program;

(5) Formulas apportioning the costs of the administrator and TRS provider among the telephone corporations that will share those costs pursuant to section 61-1305, Idaho Code;

(6) Consideration by the commission of customer complaints from TRS users; and

(7) Any other matters deemed necessary for the implementation of TRS in Idaho.

History.

I.C., § 61-1306, as added by 1992, ch. 148,
§ 1, p. 443.

STATUTORY NOTES

Cross References.

Idaho state council for the deaf and hard of hearing, § 67-7301 et seq.

Effective Dates.

Section 2 of S.L. 1992, ch. 148 declared an emergency. Approved April 2, 1992.

CHAPTER 14

[RESERVED]

CHAPTER 15

ENERGY COST RECOVERY BONDS

SECTION.

- 61-1501. Legislative intent.
- 61-1502. Definitions.
- 61-1503. Energy cost recovery bonds.
- 61-1504. Procedure for issuance of bonds.

SECTION.

- 61-1505. Security interest.
- 61-1506. Transfers in interest.
- 61-1507. Successors.
- 61-1508. Severability.

61-1501. Legislative intent. — It is the intent of the legislature in enacting this chapter to provide a process by which the recovery of large energy rate increases caused by fuel or power cost adjustments, purchased gas adjustment tracker rates, commodity tracker rate adjustments or purchased power tracker rates will be facilitated by the issuance of bonds. This legislation will provide electric and gas utilities with a mechanism for recovery of their increased costs while leveling the rate impact of such increase on the utilities’ customers. The legislature believes that this type of securities legislation is in the public interest but should not be considered as an endorsement of, or intended to provide, a mechanism for restructuring of the utility industry in the state of Idaho.

History.

I.C., § 61-1501, as added by 2001, ch. 380,
§ 1, p. 1326.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 380 declared an emergency. Approved April 10, 2001.

61-1502. Definitions. — For purposes of this chapter, the following terms shall have the following meanings:

(1) “Assignee” means any corporation, limited liability company, trust, partnership or other entity to which a public utility assigns, sells or transfers, other than as security, all or a portion of the public utility’s interest in or right to energy cost property. The term also includes any such entity to which an assignee assigns, sells or transfers, other than as security, the assignee’s interest in or right to energy cost property.

(2) “Chapter 9” means chapter 9, title 28, Idaho Code, as from time to time amended, including any successor provisions.

(3) “Commission” means the Idaho public utilities commission, as it may be constituted from time to time, and any successor agency exercising functions similar in purpose thereto.

(4) “ECA” means any of the following, as authorized by the commission and reflected in a usage-based charge of a public utility: a fuel or power cost adjustment; a purchased gas adjustment tracker rate; a commodity electric or gas tracker rate adjustment; or a purchased power tracker rate.

(5) “Energy cost amounts” means the amounts that a public utility, assignee or other issuer has been authorized to recover by the commission pursuant to an energy cost financing order, including without limitation:

(a) Amounts recoverable by a public utility pursuant to an ECA;

(b) Expenditures incurred to refinance or retire existing debt or existing equity capital of the public utility through the issuance of energy cost recovery bonds and any costs related thereto;

(c) Amounts necessary to recover federal or state taxes actually paid by a public utility, which tax liability is modified by the transactions approved in an energy cost financing order issued by the commission pursuant to this chapter; and

(d) Reasonable costs, as approved by the commission, relating to the issuance, servicing or refinancing of energy cost recovery bonds under the provisions of this chapter including, without limitation, principal and interest payments and accruals, sinking fund payments, debt service and other reserves, costs of credit enhancement, indemnities, if any, owed to an assignee or other issuer or the trustee for the energy cost recovery bonds, issuance costs and redemption premiums, if any, and all other reasonable fees, costs and charges with respect to the energy cost recovery bonds.

(6) “Energy cost bond charge” means a nonbypassable usage-based charge that the commission authorizes in an energy cost financing order as a separate line item for recovery on a public utility’s bill to all of its customers, whether such amounts are billed and/or collected by the public utility, any subsidiary or affiliate thereof, or any third party that may assume the responsibility for billing or collecting such charges.

(7) “Energy cost financing order” means an order of the commission issued in accordance with this chapter that authorizes the imposition and collection of energy cost amounts and the issuance of energy cost recovery bonds. If requested by an electric or gas public utility in its application for an energy cost financing order, energy cost bond charges shall be in an amount sufficient to recover federal and state taxes associated with the recovery of energy cost amounts described therein.

(8) “Energy cost property” means the irrevocable, vested property right created pursuant to this chapter and one (1) or more energy cost financing orders including, without limitation, the right, title and interest of a public utility, assignee or other issuer of energy cost recovery bonds to all revenues, collections, claims, payments, money or proceeds of or arising from an energy cost recovery charge or constituting the costs of recovering, reimbursing, financing or refinancing energy cost amounts and acquiring energy cost property (including the costs of issuing, servicing and retiring energy cost recovery bonds) and all rights to obtain adjustments to such energy cost recovery charge pursuant to the terms of this chapter and any energy cost financing order; provided that any right that a public utility has in the energy cost property before the sale or other transfer of such property or any other rights created under this chapter or created in any energy cost financing order and assignable under section 61-1504, Idaho Code, or assignable pursuant to an energy cost financing order shall be only a contract right. Energy cost property shall, upon its sale or other transfer, constitute a current and irrevocably vested property right notwithstanding the fact that the value of such property right will depend upon consumers using electricity and/or the public utility performing certain services.

(9) “Energy cost recovery bond” means any instrument, pass-through certificate, note, bond, debenture, certificate of participation, collateral trust certificate, beneficial interest or other evidence of indebtedness or ownership issued by a public utility, assignee or other issuer pursuant to an energy cost financing order and an executed indenture, security agreement or other similar agreement of a public utility, assignee or other issuer that is secured by or payable from energy cost bond charges or energy cost property.

(10) “Energy cost recovery bondholder” means any holder of an energy cost recovery bond or any trustee, collateral agent or other entity acting for the benefit of or on behalf of any such holder.

History.

I.C., § 61-1502, as added by 2001, ch. 380,
§ 1, p. 1326.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 380 declared an emergency. Approved April 10, 2001.

61-1503. Energy cost recovery bonds. — An electric or gas public utility may apply to the commission for an energy cost financing order

requesting that certain energy cost amounts be recovered through the sale of energy cost recovery bonds.

(1) A public utility may apply to the commission at any time and from time to time for an authorization that it may recover ECA amounts and other energy cost amounts through the issuance of energy cost recovery bonds. The public utility may apply to the commission for such an authorization either in a separate proceeding or in a proceeding considering the authorization of an ECA. Upon such an application, if the commission finds that the public interest would be better served if the energy cost amounts were recovered through the issuance of energy cost recovery bonds over the term of such bonds than if the ECA amounts were recovered over a period of one (1) year, assuming a conventional financing of such amounts, the commission shall issue an energy cost financing order to allow the public utility to recover energy cost amounts.

(2) The energy cost financing order shall detail the energy cost amount to be recovered and the period of time in which the energy cost recovery is to occur. The commission shall not issue an energy cost financing order unless the total of the then (a) existing ECAs, (b) existing energy cost bond charges, and (c) the amount identified by the electric or gas public utility in its application for such financing order as the additional ECA that would be required absent an issuance of energy cost recovery bonds pursuant to such financing order, exceeds a minimum amount (expressed in cents per kilowatt-hour or cents per therm) approved by the commission and in effect at the time of the issuance of such energy cost financing order. Each public utility shall, at least thirty (30) days prior to its first application for an energy cost financing order and at five (5) year intervals thereafter, file with the commission a proposal as to what such minimum amount should be and the commission shall, within twenty-eight (28) days of such filing, issue an order regarding its determination of such proposed minimum amount. Energy cost recovery bonds shall have an expected maturity date no later than five (5) years after the date of issuance, and scheduled principal payments on such bonds shall, to the extent practicable, be scheduled to be made in approximately equal amounts during each year of the term of such bonds. Energy cost recovery bonds shall have a legal maturity date no later than seven (7) years after the date of issuance. Energy cost bond charges shall remain in effect until all energy cost recovery bonds and all energy cost amounts have been paid in full. The commission may issue successive energy cost financing orders permitting subsequent issuances of energy cost recovery bonds.

(3) An energy cost financing order may be issued only upon the application of a public utility and shall become effective only in accordance with its terms and conditions. The public utility may withdraw its application if it disagrees with any of the terms and conditions of the energy cost financing order or any modification thereof within fourteen (14) days of issuance of the energy cost financing order or of such modification. The energy cost financing order shall specify the estimated amount of the energy cost bond charge and the formula for determining the amount of the charge that from time to time will be sufficient to recover all energy cost amounts.

(4) After issuance of an energy cost financing order, the public utility may sell, assign or otherwise transfer or pledge energy cost property or cause the energy cost recovery bonds to be issued, provided it may defer, postpone or refrain from effecting the sale, assignment, transfer, pledge or issuance, in which case no energy cost bond charge shall be imposed unless and until such energy cost recovery bonds are issued. If energy cost recovery bonds are not issued within one (1) year after the energy cost financing order becomes final and nonappealable, the authorization contained in the energy cost financing order shall expire, provided that a public utility may apply for an extension or renewal of an energy cost financing order.

(5) The energy cost financing orders, the energy cost amounts and the energy cost bond charges that have been determined by the commission shall be irrevocable and binding upon the commission. The commission shall not have authority either by rescinding, altering or amending the energy cost financing order or otherwise to, either directly or indirectly, revalue or revise for ratemaking purposes the energy cost amounts. Once the commission determines the energy cost bond charge, it cannot determine in a later proceeding that the energy cost bond charge is unjust or unreasonable or in any way reduce or impair the value of energy cost property either directly or indirectly by taking the energy cost bond charge into account when setting other rates for the public utility; nor shall the amount of revenues arising with respect thereto be subject to reduction, impairment, postponement or termination. The state of Idaho does hereby pledge to and agree with the owners of energy cost property and with any energy cost recovery bondholders that neither the state nor any of its agencies, including the commission, shall (by legislative action, ballot initiative or other similar process) limit, alter, restrict or impair the energy cost amounts, the energy cost bond charge, the energy cost property, the energy cost financing orders or any rights thereunder or ownership thereof or security interest therein or in any way impair the rights or remedies of any energy cost recovery bondholders until the energy cost recovery bonds, including all principal, interest, premium, costs, expenses and arrearages thereon, are fully met and discharged, provided nothing contained in this chapter shall preclude such a limitation, alteration, restriction or impairment if and when adequate provision (including without limitation provision for the payment of principal and interest when due) shall be made by law for the protection of the energy cost recovery bondholders. The state of Idaho does hereby acknowledge that any energy cost recovery bondholders may and will rely on this pledge and agreement and that they would be irreparably harmed by any such limitation, alteration, restriction or impairment without such adequate provision. The public utility and any assignee or other issuer are authorized to include this pledge and agreement in the energy cost recovery bonds and the documents relating thereto. Notwithstanding any other provision of this subsection, the commission shall approve such adjustments to the energy cost bond charges as may be necessary to ensure timely recovery of all energy cost amounts that are the subject of the pertinent energy cost financing order.

(6) Energy cost recovery bonds issued under this chapter and any energy cost financing orders do not constitute a debt or liability of the state or of any

political subdivision thereof and do not constitute a pledge of the full faith and credit of the state or any of its political subdivisions, but are payable solely from the funds provided therefor. All the bonds shall contain on the face thereof a statement to the following effect: "Neither the full faith and credit nor the taxing power of the state of Idaho is pledged to the payment of the principal of, or interest on, this bond." This paragraph shall in no way preclude bond guarantees or enhancements pursuant to this chapter, nor shall it preclude the payment of compensation for any breach of the state's pledge contained in subsection (5) of this section or for any action or failure to act by the commission in contravention of this chapter.

(7) The commission shall establish procedures for the expeditious processing of any application for energy cost financing orders, including the approval or disapproval of any such orders within forty-five (45) days of the application. In addition, each energy cost financing order shall specify a procedure for making adjustments to the energy cost bond charge that is the subject of the order, such adjustments to be expeditiously approved by the commission, so as to ensure the timely payment of principal and interest on the related energy cost recovery bonds and the recovery of all other energy cost amounts. Such procedure shall provide for adjustments to be made, upon application by the affected public utility, assignee or other issuer, at least annually and at such additional intervals, if any, as are specified in the order. The public utility, assignee or other issuer shall file its application for any such adjustment with the commission at least thirty (30) days before the date on which the adjustment is requested to become effective, and the commission shall approve or disapprove such application no later than thirty (30) days after the date of such filing. In addition, upon application by a public utility, assignee or other issuer after an energy cost financing order has been issued and has become effective, the commission may:

- (a) Authorize the making of adjustments to the energy cost bond charge at more frequent intervals than those specified in such order; and/or
- (b) Authorize a change in the method for calculating the energy cost bond charge from that specified in such order so as to better ensure the timely recovery of all energy cost amounts.

(8) The energy cost bond charge shall be treated as a charge for utility services for purposes of determining both the credit and collection standards to which customers (including, for purposes of this subsection, any parties that provide billing or collection services for energy supplied to another customer) may be held subject under applicable state law and the remedies for nonpayment that are available to a public utility under applicable state law, and such treatment shall not alter the tax, accounting or other intended characteristics of any energy cost bond financing.

(9) An energy cost bond charge shall constitute energy cost property when, and to the extent that, an energy cost financing order authorizing such energy cost bond charge has become effective in accordance with this chapter, and the energy cost property shall thereafter continuously exist as property for all purposes with all of the rights and privileges of this chapter for the period and to the extent provided in the energy cost financing order, but in any event until the energy cost recovery bonds are paid in full, including all principal, interest, premium, costs and arrearages thereon.

(10) Any surplus energy cost bond charge collections in excess of the amounts necessary to pay principal, premium, if any, interest, credit enhancement and all other fees, costs and charges with respect to energy cost recovery bonds shall be used to benefit customers in such manner as the commission may reasonably determine except to the extent that such use would result in a recharacterization of the tax, accounting or other intended characteristics of the financing.

History.

I.C., § 61-1503, as added by 2001, ch. 380,
§ 1, p. 1326.

STATUTORY NOTES**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 2001, ch. 380 declared an emergency. Approved April 10, 2001.

61-1504. Procedure for issuance of bonds. — (1) Public utilities, assignees or other issuers may issue energy cost recovery bonds upon approval by the commission in an energy cost financing order.

(2) Public utilities and assignees may sell and assign all or portions of their interest in energy cost property. Public utilities and assignees may sell or assign their interests to one (1) or more assignees or other issuers that make that property the basis for issuance of energy cost recovery bonds to the extent approved in the pertinent energy cost financing order. To the extent approved in the pertinent energy cost financing orders, public utilities and assignees may also pledge energy cost property as collateral, directly or indirectly, for energy cost recovery bonds providing for a security interest in the energy cost property, in the manner as set forth in section 61-1505, Idaho Code. Energy cost property may be sold or assigned by:

(a) The public utility, assignee or other issuer or a trustee for the holders of energy cost recovery bonds in connection with the exercise of remedies upon a default; or

(b) Any person acquiring the energy cost property after a sale or assignment pursuant to this subsection.

(3) To the extent that any interest in energy cost property is so sold or assigned, or is so pledged as collateral, the commission shall authorize the public utility to contract with an assignee or other issuer that it will continue to operate its system to provide service to its customers, will collect amounts with respect to the energy cost bond charges for the benefit and account of the assignee or other issuer, and will account for and remit these amounts to or for the account of the assignee or other issuer. Contracting with the assignee or other issuer in accordance with that authorization shall not impair or negate the characterization of the sale, assignment or pledge as an absolute transfer, a true sale or security interest, as applicable.

(4) Notwithstanding any other provision of law to the contrary, any requirement under this chapter or an energy cost financing order that the commission take action with respect to the subject matter of an energy cost financing order shall be binding upon the commission, as it may be

constituted from time to time, and any successor agency exercising functions similar to the commission. The commission shall have no authority to rescind, alter or amend any such requirement under this chapter or an energy cost financing order; provided however, that nothing in this subsection shall preclude adjustments of the energy cost bond charges in accordance with the provisions of section 61-1503, Idaho Code. The issuance of energy cost recovery bonds, any related transfer or pledge of energy cost recovery property and any other transactions incidental to such issuance shall be exempt from the provisions of sections 61-901 through 61-908, Idaho Code, upon approval by the commission in an energy cost financing order. The commission shall include in any energy cost financing order any additional approvals that may be required in connection with such issuance under applicable law.

(5) An assignee or other issuer shall not be considered to be a public utility solely by virtue of the transactions described in this chapter.

History.

I.C., § 61-1504, as added by 2001, ch. 380,
§ 1, p. 1326.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 380 declared an
emergency. Approved April 10, 2001.

61-1505. Security interest. — (1) To the extent the provisions of this section conflict with chapter 9 as from time to time in effect, including any successor provisions, this section shall apply.

(2) A security interest in energy cost property is valid, is enforceable against the pledgor and third parties, subject to the rights of any third parties holding security interests in the energy cost property perfected in the manner described in this section, and attaches when all of the following have occurred:

- (a) The commission has issued an energy cost financing order authorizing the energy cost bond charges, the right to the imposition and collection of which is included in the energy cost property;
- (b) Value has been given by the pledgees of the energy cost property; and
- (c) The pledgor has signed a security agreement covering the energy cost property.

(3) A valid and enforceable security interest in energy cost property is perfected when it has attached and when a financing statement has been filed in accordance with chapter 9, naming the pledgor of the energy cost property as “debtor” and identifying the energy cost property. Any description of the energy cost property shall be sufficient if it refers to the energy cost financing order creating the energy cost property. A copy of the financing statement shall be filed with the commission by the pledgor or transferor of the energy cost property, and the commission may require the pledgor or transferor to make other filings with respect to the security interest in accordance with procedures it may establish, provided that the

filings shall not affect the perfection of the security interest. A financing statement filed pursuant to this section shall remain effective until a termination statement is filed.

(4) A perfected security interest in energy cost property is a continuously perfected security interest in all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Conflicting security interests shall rank according to priority in time of perfection. Energy cost property shall constitute property for all purposes, including for contracts securing energy cost recovery bonds, whether or not the revenues and proceeds arising with respect thereto have accrued.

(5) Subject to the terms of the security agreement covering the energy cost property and the rights of any third parties holding security interests in the energy cost property perfected in the manner described in this section, the validity and relative priority of a security interest created under this section is not defeated or adversely affected by the commingling of revenues arising with respect to the energy cost property with other funds of the public utility that is the pledgor or transferor of the energy cost property, or by any security interest in a deposit account of that public utility perfected under chapter 9, into which the revenues are deposited. Subject to the terms of the security agreement, the pledgees of the energy cost property shall have a perfected security interest in all cash and deposit accounts of the public utility in which revenues arising with respect to the energy cost property have been commingled with other funds, but the perfected security interest shall be limited to an amount not greater than the amount of the revenues with respect to the energy cost property received by the public utility within twelve (12) months before: (a) any default under the security agreement, or (b) the institution of insolvency proceedings by or against the public utility, less payments from the revenues to the pledgees during that twelve (12) month period.

(6) If an event of default occurs under the security agreement covering the energy cost property, the pledgees of the energy cost property, subject to the terms of the security agreement, shall have all rights and remedies of a secured party upon default under chapter 9, and shall be entitled to foreclose or otherwise enforce their security interest in the energy cost property, subject to the rights of any third parties holding prior security interests in the energy cost property perfected in the manner provided in this section. In addition, the commission may require, in the energy cost financing order creating the energy cost property, that, in the event of default by the public utility in payment of revenues arising with respect to the energy cost property, the commission and any successor thereto, upon the application by the pledgees or transferees, including transferees under section 61-1506, Idaho Code, of the energy cost property, and without limiting any other remedies available to the pledgees or transferees by reason of the default, shall order the sequestration and payment to the pledgees or transferees of revenues arising with respect to the energy cost property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor or transferor of the energy cost property.

(7) Energy cost recovery property shall constitute an account as that term is defined under chapter 9.

(8) Sections 28-9-204 and 28-9-205, Idaho Code, as from time to time amended, including any successor provisions, shall apply to a pledge of energy cost property by a public utility, assignee or other issuer.

(9) This subsection sets forth the terms by which a consensual security interest can be created and perfected in the energy cost property. Unless otherwise ordered by the commission with respect to any series of energy cost recovery bonds on or prior to the issuance of the series, there shall exist a statutory lien as provided in this subsection. Upon the effective date of the energy cost financing order, there shall exist a first priority lien on all energy cost property then existing or thereafter arising pursuant to the terms of the energy cost financing order. This lien shall arise by operation of this subsection automatically without any action on the part of the public utility, any assignee or other issuer, or any other person. This lien shall secure all obligations, then existing or subsequently arising, to the holders of the energy cost recovery bonds issued pursuant to the energy cost financing order, the trustee or representative for the holders, and any other entity specified in the energy cost financing order. The persons for whose benefit this lien is established shall, upon the occurrence of any defaults specified in the pertinent energy cost financing order, have all rights and remedies of a secured party upon default under chapter 9, and shall be entitled to foreclose or otherwise enforce this statutory lien in the energy cost property. This lien shall attach to the energy cost property regardless of who shall own, or shall subsequently be determined to own, the energy cost property including any public utility, any assignee or other issuer, or any other person. This lien shall be valid, perfected, and enforceable against the owner of the energy cost property and all third parties upon the effectiveness of the energy cost financing order without any further public notice; provided however, that any person may, but shall not be required to, file a financing statement in accordance with subsection (3) of this section. Financing statements so filed may be "protective filings" and shall not be evidence of the ownership of the energy cost property. A perfected statutory lien in energy cost property is a continuously perfected lien in all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Conflicting liens shall rank according to priority in time of perfection. In addition, the commission may require, in the energy cost financing order creating the energy cost property, that, in the event of default by the public utility in payment of revenues arising with respect to energy cost property, the commission and any successor thereto, upon the application by the beneficiaries of the statutory lien, and without limiting any other remedies available to the beneficiaries by reason of the default, shall order the sequestration and payment to the beneficiaries of revenues arising with respect to the energy cost property.

History.

I.C., § 61-1505, as added by 2001, ch. 380,
§ 1, p. 1326.

STATUTORY NOTES

Cross References.

Meaning of "chapter 9," § 61-1502.

Effective Dates.

Section 2 of S.L. 2001, ch. 380 declared an emergency. Approved April 10, 2001.

61-1506. Transfers in interest. — (1) A transfer of energy cost property by a public utility to an assignee, or by an assignee to another assignee, that the parties have in the governing documentation expressly stated to be a sale or other absolute transfer, in a transaction approved in an energy cost financing order, shall be treated as an absolute transfer of all of the transferor's right, title and interest, as in a true sale, and not as a pledge or other financing, of the energy cost property in each case notwithstanding any contrary treatment for federal and state income and franchise taxes, accounting or other purposes.

(2) A transfer of energy cost property shall be deemed perfected as against third persons and shall vest title in the transferee when both of the following have taken place:

(a) The commission has issued the energy cost financing order authorizing the energy cost bond charges included in the energy cost property.

(b) An assignment of the energy cost property in writing has been executed and delivered to the transferee.

(3) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement in accordance with chapter 9, naming the assignor of the energy cost property as debtor and identifying the energy cost property has priority. Any description of the energy cost property shall be sufficient if it refers to the energy cost financing order creating the energy cost property. A copy of the financing statement shall be filed by the assignee with the commission, and the commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures it may establish, but these filings shall not affect the perfection of the transfer.

(4) The interest of an assignee or pledgee in energy cost property and in the revenues and collections arising from such property are not subject to set-off, counterclaim, surcharge or defense by the public utility or any other person or in connection with the bankruptcy of the public utility or any other person.

History.

I.C., § 61-1506, as added by 2001, ch. 380,
§ 1, p. 1326.

STATUTORY NOTES

Cross References.

Meaning of "chapter 9," § 61-1502.

Effective Dates.

Section 2 of S.L. 2001, ch. 380 declared an emergency. Approved April 10, 2001.

61-1507. Successors. — Any successor to the public utility, whether pursuant to any bankruptcy, reorganization or other insolvency proceeding, or pursuant to any merger, sale or transfer, by operation of law or otherwise, shall perform and satisfy all obligations of the public utility pursuant to this chapter in the same manner and to the same extent as was required of the public utility before such proceeding or merger, sale or transfer including, but not limited to, billing, collecting and paying to the energy cost recovery bondholders or their representatives or the applicable financing entity energy cost recovery charges and any other revenues arising with respect to the energy cost property sold to the applicable financing entity or pledged to secure energy cost recovery bonds and seeking energy cost bond charge adjustments, as necessary and permitted by the pertinent energy cost financing order, to recover all energy cost amounts designated in such energy cost financing order.

History.

I.C., § 61-1507, as added by 2001, ch. 380,
§ 1, p. 1326.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 380 declared an
emergency. Approved April 10, 2001.

61-1508. Severability. — If any provision of this chapter is held to be invalid or is invalidated, superseded, replaced or repealed, or expires for any reason, that occurrence does not affect the validity or continuation of this chapter or any other provision of this title that is relevant to the issuance, administration, payment, retirement or refunding of energy cost recovery bonds or to any actions of the public utility, its successors, an assignee or other issuer or a collection agent, which shall remain in full force and effect.

History.

I.C., § 61-1508, as added by 2001, ch. 380,
§ 1, p. 1326.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2001, ch. 380 declared an
emergency. Approved April 10, 2001.

CHAPTER 16

UTILITY COST REDUCTION BONDS

SECTION.

- 61-1601. Legislative intent.
- 61-1602. Definitions.
- 61-1603. Cost reduction order.
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cost reduction financing.
- 61-1605. Cost reduction rate.

SECTION.

- 61-1606. Cost reduction instruments.
- 61-1607. Security interest.
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credit.

SECTION.

61-1611. Severability.

61-1601. Legislative intent. — It is the intent of the legislature in enacting this chapter to authorize the public utilities commission to approve certain cost reduction charges or rates as a method of financing or refinancing costs incurred or to be incurred by electric and gas utilities that will accrue benefits to Idaho consumers through reduced utility rates. The legislature believes that this type of securities legislation is in the public interest but should not be considered as endorsement of, or intended to provide, a mechanism for restructuring of the utility industry in the state of Idaho.

History.

I.C., § 61-1601, as added by 2005, ch. 372,
§ 1, p. 1186.

61-1602. Definitions. — For purposes of this chapter, the following terms shall have the following meanings, unless the context clearly requires otherwise:

(1) “Approved costs” means the amounts that a public utility or assignee has been authorized to recover by the commission pursuant to a cost reduction order including, without limitation:

(a) Amounts incurred or to be incurred for purposes for which a public utility may issue stock and stock certificates or other evidences of interest or ownership, or bonds, notes or other evidences of indebtedness under chapter 9, title 61, Idaho Code;

(b) Amounts necessary to recover federal or state taxes actually paid by a public utility, which tax liability is modified by the transactions approved in a cost reduction order issued by the commission pursuant to this chapter; and

(c) Reasonable costs, as approved by the commission, relating to the issuance, servicing or refinancing of cost reduction instruments under the provisions of this chapter including, without limitation, principal, interest or other payments and accruals, sinking fund payments, debt service and other reserves, costs of credit enhancement, indemnities, if any, owed to an assignee or the trustee for the cost reduction instrument, issuance costs and redemption premiums, if any, and all other reasonable fees, costs and charges with respect to the cost reduction instrument.

(2) “Assignee” means any corporation, limited liability company, trust, partnership or other entity to which a public utility assigns, sells or transfers, other than as security, all or a portion of the public utility’s interest in or right to cost reduction property. The term also includes any such entity to which an assignee assigns, sells or transfers, other than as security, the assignee’s interest in or right to cost reduction property.

(3) “Chapter 9” means chapter 9, title 28, Idaho Code, as from time to time amended, including any successor provisions.

(4) “Cost reduction instrument” means any instrument, pass-through certificate, note, bond, debenture, certificate of participation, collateral trust certificate, beneficial interest or other evidence of indebtedness or owner-

ship issued by a public utility or an assignee pursuant to a cost reduction order and an executed indenture, security agreement or other similar instrument that is secured by or payable from cost reduction rates or cost reduction property.

(5) "Cost reduction instrument holder" means any holder of a cost reduction instrument or any trustee, collateral agent or other entity acting for the benefit of or on behalf of any such holder.

(6) "Cost reduction order" means an order of the commission issued in accordance with this chapter that authorizes the imposition and collection of approved costs.

(7) "Cost reduction property" means the irrevocable, vested property right created pursuant to this chapter and one (1) or more cost reduction orders including, without limitation, the right, title and interest of a public service company or assignee to all revenues, collections, claims, payments, money or proceeds of or arising from a cost reduction rate, and all rights to obtain adjustments to such cost reduction rate pursuant to the terms of this chapter and any cost reduction order.

(8) "Cost reduction rate" means a charge or rate that the commission authorizes in a cost reduction order, whether such amounts are billed and/or collected by the public utility, an assignee, any subsidiary or affiliate thereof, or any third party that may assume the responsibility for billing or collecting such cost reduction charges.

(9) "Public utility" means any electric or gas corporation subject to the jurisdiction, regulation and control of the public utilities commission as contained in chapter 1, title 61, Idaho Code.

History.

I.C., § 61-1602, as added by 2005, ch. 372,
§ 1, p. 1186.

61-1603. Cost reduction order. — (1) A public utility may apply to the commission for a cost reduction order authorizing the recovery of approved costs through the imposition and collection of a cost reduction rate.

(2) A public utility may apply to the commission from time to time for a cost reduction order in a manner prescribed by the commission, in separate proceedings for this purpose or in connection with a general rate case. Such application may also include a request for authority to issue and sell cost reduction instruments to be secured by or payable from the cost reduction rate that results from such cost reduction order or the cost reduction property created by this chapter and the cost reduction order related to such cost reduction rate. Upon such an application, if the commission finds that the public interest would be served if the approved costs were recovered through a cost reduction rate, the commission shall issue a cost reduction order to allow the public utility to recover the approved costs through a cost reduction rate and may also provide authority to issue and sell cost reduction instruments.

(3) A cost reduction order shall detail the approved costs to be recovered and the period of time in which recovery of the approved costs is to occur. A

cost reduction order shall specify the amount of the cost reduction rate and the method for determining the amount of the cost reduction rate that from time to time will be sufficient to recover all approved costs. Cost reduction rates shall remain in effect until all approved costs have been paid in full.

(4) A cost reduction order may be issued only upon the application of a public utility and shall become effective only in accordance with its terms and conditions. A public utility may withdraw its application for a cost reduction order if it disagrees with any of the terms and conditions of the order within fourteen (14) days of service of a final order on the public utility. A public utility shall effect the withdrawal of its application by filing a written notice of withdrawal with the commission within such time period. Nothing in this section shall be construed to limit or preclude other remedies that may be available to the public utility under applicable law.

(5) No public utility shall be treated as having acted unreasonably or imprudently by reason of its failure to apply for a cost reduction order, by reason of its withdrawal of an application for a cost reduction order, or by reason of its failure to arrange for the issuance of cost reduction instruments pursuant to a cost reduction order.

(6) Upon issuance of a cost reduction order, a public utility may sell, assign or otherwise transfer or pledge cost reduction property created by this chapter and the applicable cost reduction order, and if authorized by the particular cost reduction order, a public utility or an assignee may issue or cause to be issued cost reduction instruments.

(7) Any cost reduction order, and the approved costs and the cost reduction rates that have been authorized by the commission in such cost reduction order, shall be irrevocable and binding upon the commission. The commission shall not have authority either by rescinding, altering or amending a cost reduction order or otherwise to, either directly or indirectly, revalue or revise for ratemaking purposes the approved costs or the cost reduction rates. Once the commission authorizes a cost reduction rate, it cannot determine in a later proceeding that the cost reduction rate is unjust or unreasonable, or in any way reduce or impair the value of related cost reduction property, either directly or indirectly, by taking the cost reduction rate into account when setting other rates for the public utility; nor shall the amount of revenues arising with respect thereto be subject to reduction, impairment, postponement or termination. The state of Idaho does hereby pledge to and agree with the owners of cost reduction property and with any cost reduction instrument holders that neither the state nor any of its agencies, including the commission, shall (by administrative or legislative action, ballot initiative or other similar process) limit, alter, restrict or impair the approved costs, the cost reduction rate, the cost reduction property, the cost reduction orders or any rights thereunder or ownership thereof or security interest therein or in any way impair the rights or remedies of any cost reduction instrument holders. The state does hereby acknowledge that any cost reduction instrument holders may and will rely on this pledge and agreement and that they would be irreparably harmed by any such limitation, alteration, restriction or impairment without such adequate provision.

(8) Notwithstanding any other provision of this chapter, the commission will from time to time, and no less frequently than annually, approve adjustments to the cost reduction rates as may be necessary to ensure timely and complete recovery of all approved costs that are the subject of the pertinent cost reduction order.

(9) Subject to the foregoing limitations, the commission has the same authority with respect to a proposed cost reduction rate as it has with regard to any other tariff, schedule or classification the effect of which is to change any rate or charge, including, without limitation, the power granted by chapter 6, title 61, Idaho Code, to conduct a hearing concerning a proposed cost reduction rate and the reasonableness and justness thereof.

(10) The commission shall establish procedures for the expeditious processing of any application for cost reduction orders and adjustments thereto, including the approval or disapproval of any such orders within forty-five (45) days of the application therefor.

History.

I.C., § 61-1603, as added by 2005, ch. 372,
§ 1, p. 1186.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

61-1604. Limitation on aggregate amount of cost reduction financing. — The amount of approved costs in a cost reduction order, either individually or in the aggregate with previously approved costs included in cost reduction orders that remain outstanding, may not exceed an amount equal to forty percent (40%) of the public utility's total capitalization, including both debt and equity, as of the end of the fiscal year of such public utility preceding the application for such cost reduction order.

History.

I.C., § 61-1604, as added by 2005, ch. 372,
§ 1, p. 1186.

61-1605. Cost reduction rate. — (1) Each cost reduction order shall specify a procedure for making adjustments to the cost reduction rate that is the subject of the order.

(2) Upon application by a public utility the commission may:

(a) Authorize the making of adjustments to the cost reduction rate at more frequent intervals than those specified in such order; and/or

(b) Authorize a change in the method for calculating the cost reduction rate from that specified in such order so as to better ensure the timely and complete recovery of all approved costs.

(3) The cost reduction rate shall be treated as a charge for utility services for purposes of determining both the credit and collection standards and the remedies for nonpayment that are available to a public utility.

(4) A cost reduction rate shall constitute cost reduction property when,

and to the extent that, a cost reduction order authorizing such cost reduction rate has become effective in accordance with this chapter, and the cost reduction property shall thereafter continuously exist as property for all purposes with all of the rights and privileges of this chapter for the period and to the extent provided in the cost reduction order, but in any event until the approved costs are paid in full.

(5) Any surplus cost reduction rate collections in excess of the amounts necessary to pay approved costs shall be used in such manner as the commission may reasonably determine.

(6) The obligation to pay amounts in respect of a cost reduction rate cannot be avoided by the formation of a local publicly owned utility or other entity, or by annexation of any portion of the service territory of the public utility by a local publicly owned electric utility or other entity.

History.

I.C., § 61-1605, as added by 2005, ch. 372,
§ 1, p. 1186.

61-1606. Cost reduction instruments. — (1) Public utilities and assignees may issue and sell cost reduction instruments upon approval by the commission of such action in a cost reduction order.

(2) Public utilities and assignees may sell and assign all or portions of their interest in cost reduction property that is the basis for the issuance of cost reduction instruments to the extent approved in the pertinent cost reduction order. To the extent approved in the pertinent cost reduction orders, public utilities and assignees may also pledge cost reduction property as collateral, directly or indirectly, for cost reduction instruments providing for a security interest in the cost reduction property, in the manner as set forth in this chapter. Cost reduction property may also be sold or assigned by:

(a) A public utility, an assignee or a trustee for the holders of cost reduction instruments in connection with the exercise of remedies upon a default; or

(b) Any person acquiring the cost reduction property after a sale or assignment pursuant to this subsection.

(3) To the extent that any interest in cost reduction property is so sold or assigned, or is so pledged as collateral, the commission may authorize the public utility to contract with an assignee that it will continue to operate its system to provide service to its customers, will collect amounts with respect to the cost reduction rates for the benefit and account of the assignee, and will account for and remit these amounts to or for the account of the assignee. Contracting with the assignee in accordance with that authorization shall not impair or negate the characterization of the sale, assignment or pledge as an absolute transfer, a true sale or security interest, as applicable.

(4) Upon approval by the commission of a cost reduction order, any issuance of cost reduction instruments approved therein, any related transfer or pledge of cost reduction property and any other transactions incidental to such issuance shall be exempt from the requirements of

[sections] 61-901 through 61-908, Idaho Code. The commission may include in any cost reduction order any additional approvals that may be required in connection with such issuance under applicable law.

(5) An assignee shall not be considered to be an electric or gas corporation solely by virtue of the transactions described in this chapter.

History.

I.C., § 61-1606, as added by 2005, ch. 372,
§ 1, p. 1186.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in subsection (4)

was added by the compiler to conform to the
statutory citation style.

61-1607. Security interest. — (1) To the extent the provisions of this section conflict with chapter 9 as from time to time in effect, including any successor provisions, this section shall apply.

(2) A security interest in cost reduction property is valid, is enforceable against the pledgor and third parties, subject to the rights of any third parties holding security interests in the cost reduction property perfected in the manner described in this section, and attaches when all of the following have occurred:

- (a) The commission has issued a cost reduction order authorizing a cost reduction rate, the right to the imposition and collection of which is included in the cost reduction;
- (b) Value has been given by the pledgees of the cost reduction property; and
- (c) The pledgor has signed a security agreement covering the cost reduction property.

(3) A valid and enforceable security interest in cost reduction property is perfected when it has attached and when a financing statement has been filed in accordance with chapter 9, naming the pledgor of the cost reduction property as "debtor" and identifying the cost reduction property. Any description of the cost reduction property shall be sufficient if it refers to the cost reduction order creating the cost reduction property. A copy of the financing statement shall be filed with the commission by the pledgor or transferor of the cost reduction property, and the commission may require the pledgor or transferor to make other filings with respect to the security interest in accordance with procedures it may establish, provided that the filings shall not affect the perfection of the security interest. A financing statement filed pursuant to this section shall remain effective until a termination statement is filed.

(4) A perfected security interest in cost reduction property is a continuously perfected security interest in all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Conflicting security interests shall rank according to priority in time of perfection. Cost reduction property shall constitute property for all purposes, including for contracts securing cost reduction instruments, whether or not the revenues and proceeds arising with respect thereto have accrued.

(5) Subject to the terms of the security agreement covering the cost reduction property and the rights of any third parties holding security interests in the cost reduction property perfected in the manner described in this section, the validity and relative priority of a security interest created under this section is not defeated or adversely affected by the commingling of revenues arising with respect to the cost reduction property with other funds of the public utility that is the pledgor or transferor of the cost reduction property, or by any security interest in a deposit account of that public utility perfected under chapter 9, into which the revenues are deposited. Subject to the terms of the security agreement, the pledgees of the cost reduction property shall have a perfected security interest in all cash and deposit accounts of the public utility in which revenues arising with respect to the cost reduction property have been commingled with other funds, but the perfected security interest shall be limited to an amount not greater than the amount of the revenues with respect to the cost reduction property received by the public utility within twelve (12) months before: (a) any default under the security agreement, or (b) the institution of insolvency proceedings by or against the public utility, less payments from the revenues to the pledgees during that twelve (12) month period.

(6) If an event of default occurs under the security agreement covering the cost reduction property, the pledgees of the cost reduction property, subject to the terms of the security agreement, shall have all rights and remedies of a secured party upon default under chapter 9, and shall be entitled to foreclose or otherwise enforce their security interest in the cost reduction property, subject to the rights of any third parties holding prior security interests in the cost reduction property perfected in the manner provided in this section. In addition, the commission may require, in the cost reduction order creating the cost reduction property, that, in the event of default by the public utility in payment of revenues arising with respect to the cost reduction property, the commission and any successor thereto, upon the application by the pledgees or transferees, including transferees under section 61-1608, Idaho Code, of the cost reduction property, and without limiting any other remedies available to the pledgees or transferees by reason of the default, shall order the sequestration and payment to the pledgees or transferees of revenues arising with respect to the cost reduction property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor or transferor of the cost reduction property.

(7) Cost reduction property shall constitute a payment intangible as that term is defined under chapter 9.

(8) Sections 28-9-204 and 28-9-205, Idaho Code, as from time to time amended, including any successor provisions, shall apply to a pledge of cost reduction property by a public utility, assignee or other issuer.

(9) This section sets forth the terms by which a consensual security interest can be created and perfected in cost reduction property. Unless otherwise ordered by the commission with respect to any series of cost reduction instruments on or prior to the issuance of the series, there shall exist a statutory lien as provided in this section. Upon the effective date of

the cost reduction order, there shall exist a first priority lien on all cost reduction property then existing or thereafter arising pursuant to the terms of the cost reduction order. This lien shall arise by operation of this section automatically without any action on the part of the public utility, any assignee or other issuer, or any other person. This lien shall secure all obligations, then existing or subsequently arising, to the holders of the cost reduction instruments issued pursuant to the cost reduction order, the trustee or representative for the holders, and any other entity specified in the cost reduction order. The persons for whose benefit this lien is established shall, upon the occurrence of any defaults specified in the pertinent cost reduction order, have all rights and remedies of a secured party upon default under chapter 9, and shall be entitled to foreclose or otherwise enforce this statutory lien in the cost reduction property. This lien shall attach to the cost reduction property regardless of who shall own, or shall subsequently be determined to own, the cost reduction property including any public utility, any assignee or other issuer, or any other person. This lien shall be valid, perfected, and enforceable against the owner of the cost reduction property and all third parties upon the effectiveness of the cost reduction order without any further public notice; provided however, that any person may, but shall not be required to, file a financing statement in accordance with subsection (3) of this section. Financing statements so filed may be "protective filings" and shall not be evidence of the ownership of the cost reduction property. A perfected statutory lien in cost reduction property is a continuously perfected lien in all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Conflicting liens shall rank according to priority in time of perfection. In addition, the commission may require, in the cost reduction order creating the cost reduction property, that, in the event of default by the public utility in payment of revenues arising with respect to cost reduction property, the commission and any successor thereto, upon the application by the beneficiaries of the statutory lien, and without limiting any other remedies available to the beneficiaries by reason of the default, shall order the sequestration and payment to the beneficiaries of revenues arising with respect to the cost reduction property.

History.

I.C., § 61-1607, as added by 2005, ch. 372,
§ 1, p. 1186.

STATUTORY NOTES**Cross References.**

Meaning of "chapter 9," § 61-1502.

61-1608. Transfers in interest. — (1) A transfer of cost reduction property by a public utility to an assignee, or by an assignee to another assignee, that the parties have in the governing documentation expressly stated to be a sale or other absolute transfer, in a transaction approved in a cost reduction order, shall be treated as an absolute transfer of all of the transferor's right, title and interest, as in a true sale, and not as a pledge or

other financing, of the cost reduction property, in each case notwithstanding any contrary treatment for federal or state income and franchise taxes, accounting or other purposes.

(2) A transfer of cost reduction property shall be deemed perfected as against third persons and shall vest title in the transferee when both of the following have taken place:

- (a) The commission has issued the cost reduction order authorizing the cost reduction rate included in the cost reduction property; and
- (b) A written assignment of the cost reduction property has been executed and delivered to the transferee.

(3) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement in accordance with chapter 9, naming the assignor of the cost reduction property as debtor and identifying the cost reduction property has priority. Any description of cost reduction property shall be sufficient if it refers to the cost reduction order creating the cost reduction property. A copy of the financing statement shall be filed by the assignee with the commission, and the commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures it may establish, but these filings shall not affect the perfection of the transfer.

(4) The interest of an assignee or pledgee in cost reduction property and in the revenues and collections arising from such property are not subject to set-off, counterclaim, surcharge or defense by the public utility or any other person or in connection with the bankruptcy of the public utility or any other person.

History.

I.C., § 61-1608, as added by 2005, ch. 372,
§ 1, p. 1186.

STATUTORY NOTES

Cross References.

Meaning of "chapter 9," § 61-1502.

61-1609. Successors. — Any successor to the public utility, whether pursuant to any bankruptcy, reorganization or other insolvency proceeding, or pursuant to any merger, sale or transfer, by operation of law or otherwise, shall perform and satisfy all obligations of the public utility pursuant to this chapter in the same manner and to the same extent as was required of the public utility before such proceeding or merger, sale or transfer including, but not limited to, billing, collecting and paying to the cost reduction instrument holders, or their representatives or the applicable financing entity, cost reduction rates and any other revenues arising with respect to the cost reduction property sold to the applicable financing entity or pledged to secure cost reduction instruments and seeking cost reduction rate adjustments, as necessary and permitted by the pertinent cost reduction order, to recover all approved costs designated in such cost reduction order.

History.

I.C., § 61-1609, as added by 2005, ch. 372,
§ 1, p. 1186.

61-1610. Disclaimer of state full faith and credit. — Cost reduction rates, cost reduction property, and any related cost reduction instruments issued under this chapter and any applicable cost reduction orders do not constitute a debt or liability of this state or of any political subdivision thereof and do not constitute a pledge of the full faith and credit of this state or any of its political subdivisions, but are payable solely from the funds provided therefor. Any cost reduction instruments shall contain on the face thereof a statement to the following effect: “Neither the full faith and credit nor the taxing power of the state of Idaho is pledged to the payment of the principal of, or interest on, this instrument.”

History.

I.C., § 61-1610, as added by 2005, ch. 372,
§ 1, p. 1186.

61-1611. Severability. — If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

History.

I.C., § 61-1611, as added by 2005, ch. 372,
§ 1, p. 1186.

STATUTORY NOTES**Compiler's Notes.**

The terms “this act” and “the act” refer to

S.L. 2005, ch. 372, which is codified as §§ 61-1601 to 61-1611.

CHAPTER 17**SITING OF CERTAIN ELECTRICAL TRANSMISSION FACILITIES****SECTION.**

61-1701. Legislative purposes and findings.
61-1702. Definitions.
61-1703. Commission authority — Preemption — Rules.
61-1704. Notice of intent to file — Content — Prefiling procedures.
61-1705. Application for a route certificate.

SECTION.

61-1706. Construction standards.
61-1707. Public workshops.
61-1708. Effect of issuance of route certification.
61-1709. Commission procedures — Administrative remedy — Reconsideration — Judicial review.

61-1701. Legislative purposes and findings. — (1) The provisions of this chapter apply to the construction or modification of transmission facilities located in a national interest electric transmission corridor designated by the secretary of the United States department of energy under section 1221 of the energy policy act of 2005. The purpose of this chapter is to provide for the efficient and timely review of applications for the siting of electric transmission facilities in federally designated national interest

electric transmission corridors. The review is intended to facilitate participation from all interested entities and individuals and to avoid federal preemption.

(2) The legislature finds that the efficient and safe transmission of electricity is critical to the well-being of the citizens and the economy of this state, the region and the nation. The legislature further finds that enactment of this chapter is necessary for the protection of the public welfare and public interest.

(3) After the secretary has designated national interest electric transmission corridors in Idaho, no construction or modification of transmission facilities may be undertaken in a national interest electric transmission corridor without first obtaining a route certificate from the commission.

History.

I.C., § 61-1701, as added by 2007, ch. 186,
§ 1, p. 535.

STATUTORY NOTES

Federal References.

Section 1221 of the energy policy act of 2005, referred to in subsection (1), is codified as 16 U.S.C.S. § 824p.

Effective Dates.

Section 4 of S.L. 2007, ch. 186 declared an emergency. Approved March 26, 2007.

61-1702. Definitions. — (1) “Affected landowner” includes owners of property interests, as reflected in the most recent county or city tax records as receiving the tax notice, whose property:

(a) Is directly affected, either crossed or used, by the proposed transmission line, including all facility sites, rights-of-way, access roads and temporary work spaces; and

(b) Abuts either side of an existing right-of-way or facility site owned in fee by any utility company, or abuts the edge of a proposed transmission line or right-of-way which runs along a property line in the area in which the transmission line would be constructed, or contains a residence within fifty (50) feet of the proposed transmission line.

(2) “Application” means any request by a transmitting utility for a route certificate for the construction and operation of new transmission facilities or the modification of existing transmission facilities located in a national interest electric transmission corridor in Idaho.

(3) “Commission” means the Idaho public utilities commission.

(4) “Local government” means a city or county.

(5) “National interest electric transmission corridor” is any geographic area designated by the secretary of energy as experiencing electric energy transmission capacity constraints or congestion pursuant to section 1221 of the energy policy act of 2005.

(6) “Secretary” means the secretary of the United States department of energy.

(7) “Transmission facility” means:

(a) Newly constructed high voltage transmission lines with an operating level capacity of one hundred fifteen thousand (115,000) volts or more;

- (b) Rebuilt and upgraded existing high voltage transmission lines with an operating level capacity of at least fifty-seven thousand (57,000) volts to one hundred fifteen thousand (115,000) volts or more along the same right-of-way; or
- (c) Electric facilities associated with high voltage transmission lines such as substations, switchyards or temporary contractor work yards.
- (7) "Transmitting utility" is an entity that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce.

History.

I.C., § 61-1702, as added by 2007, ch. 186,
§ 1, p. 535.

STATUTORY NOTES**Federal References.**

Section 1221 of the energy policy act of 2005, referred to in subsection (1), is codified as 16 U.S.C.S. § 824p.

Effective Dates.

Section 4 of S.L. 2007, ch. 186 declared an emergency. Approved March 26, 2007.

61-1703. Commission authority — Preemption — Rules. — (1) In the event that the secretary designates a national interest electric transmission corridor within Idaho, the public utilities commission is authorized to review the siting of all electric transmission facilities within such federally designated corridor. After notice and an opportunity for hearing, the commission shall review and deny, approve, or approve with conditions an application seeking a route certificate to construct transmission facilities within a designated national interest electric transmission corridor.

(2) In reviewing an application for a route certificate, the commission shall base its findings on the following standards:

- (a) The regional or national benefits expected to be achieved by the proposed construction or modification of transmission facilities;
- (b) The proposed construction or modification will significantly reduce transmission congestion in interstate commerce and benefit electric consumers;
- (c) The proposed construction or modification is consistent with sound national energy policy and will enhance energy independence;
- (d) The proposed construction or modification is consistent with the public interest;
- (e) The proposed route minimizes adverse impacts on the important environmental features of the state and localities to the extent reasonable and economical;
- (f) The transmission utility has the financial ability and experience to undertake the construction of transmission facilities; and
- (g) The proposed modification will maximize, to the extent reasonable and economical, and consistent with reliability planning, the transmission capabilities of existing towers or structures.

(3) The commission is vested with the authority to preempt local government land use decisions pertaining to the construction of transmission facilities in national interest electric transmission corridors in the following instances:

(a) If a local government has denied or not authorized a transmitting utility to construct transmission facilities in a designated national interest electric transmission corridor by sixty (60) days after an application for a route certificate has been filed with the commission; or

(b) If the transmitting utility claims that a local land use condition imposed by a local government is unreasonable or not economical, then the commission may preempt the local government's denial, lack of decision or conditioned decision after giving the affected local government an opportunity to appear before the commission.

The transmitting utility shall have the burden of demonstrating that the local government's final land use decision will not be timely issued, is unreasonable, or is not economical.

(4) The commission may promulgate temporary and proposed rules as may be necessary to implement the timely review of applications for transmission routing certificates in a national interest electric transmission corridor.

History.

I.C., § 61-1703, as added by 2007, ch. 186,
§ 1, p. 535.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 2007, ch. 186 declared an emergency. Approved March 26, 2007.

61-1704. Notice of intent to file — Content — Prefiling procedures. — (1) Each transmission utility seeking authority to site electric transmission facilities in a national interest electric transmission corridor, shall submit a notice of intent to file an application for a route certificate. The notice of intent shall be filed with the commission at least one hundred twenty (120) days before the transmission utility intends to file an application for a transmission route certificate. If the application described in the notice of intent is not filed within one hundred eighty (180) days, the notice will be considered withdrawn unless the transmitting utility provides a written statement that it still intends to file an application as originally described in the notice of intent.

(2) The notice of intent shall include, but is not limited to, the following information:

(a) The name and mailing address of the transmitting utility including a contact name, address and telephone number of the contact person for the notice of intent. If the transmitting utility is a corporation, copies of its articles of incorporation and proof of its authorization and/or registration to conduct business in Idaho;

(b) A detailed description of the proposed transmission route, including location maps and plot plans to scale showing all major components including a description of zoning and site availability for any permanent transmission facility;

(c) A description of the proposed right-of-way width for the transmission

line, including to what extent a new right-of-way will be required or an existing right-of-way will be widened;

(d) A description of the proposed transmission line structures and their dimensions;

(e) A description of the schedule desired for the project including the expected application filing date, the desired date for commission approval, the beginning date for construction, and the proposed project operation date;

(f) A list of the federal, state, tribal and local government permitting entities including mailing address, contact names, telephone numbers and e-mail addresses. The notice shall disclose how the transmitting utility intends to account for each of the permitting entities and when it proposes to file with these permitting entities for the respective permits or other authorizations prior to the route certificate application in section 61-1705, Idaho Code;

(g) A statement that the transmitting utility has, or will within three (3) days of filing the notice of intent with the commission, provide a copy of such notice to affected landowners, local governments, and tribal, federal and state permitting entities;

(h) A list and description of the website and physical locations where copies of the notice of intent are located in each county traversed by the proposed transmission route; and

(i) An explanation of what rights the affected landowner has at the commission and in proceedings under the Idaho eminent domain laws.

(3) Within three (3) days of filing the notice of intent with the commission, the transmitting utility shall publish notice of its filing. The transmitting utility shall:

(a) Make available copies of the notice of intent in publicly accessible locations in each county or city throughout the project area in either electronic or paper format;

(b) Create and maintain an up-to-date project website devoted solely to dispense information about the proposed transmission project;

(c) Designate a single point of contact and explain how the transmitting utility will respond to requests for information from the public as well as federal, state, local government and tribal permitting entities; and

(d) Cause to be published in a daily or weekly newspaper of general circulation at least once per week for two (2) weeks in each county where the proposed transmission route is located that a notice of intent has been filed with the commission. This public notice shall describe the proposed route including a map of the route, and advise readers how to obtain more information.

(4) The commission shall, within twenty-one (21) days from when the notice of intent is filed, convene a preapplication conference with the transmitting utility, federal, state, local government and tribal permitting entities, for the purpose of reviewing the notice of intent.

History.

I.C., § 61-1704, as added by 2007, ch. 186,
§ 1, p. 535.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 2007, ch. 186 declared an emergency. Approved March 26, 2007.

61-1705. Application for a route certificate. — (1) Each application for a route certificate to construct a transmission facility within a designated national interest electric transmission corridor shall contain the following general information:

- (a) The exact legal name of the transmitting utility; its principal place of business; whether the transmitting utility is an individual, partnership, corporation, or otherwise; the state laws under which the transmitting utility is organized or authorized; and the name, title, mailing address and e-mail address of the person or persons to whom communications concerning the application are to be addressed;
- (b) A concise description of the transmitting utility's existing operation;
- (c) A concise description of the proposed project sufficient to explain its scope and purpose. The description must, at a minimum: describe the proposed location of the principal project transmission facilities and the planned routing of the transmission line; contain the general characteristics of the transmission line including voltage, types of towers, and origin and termination point of the transmission line; describe the geographic character of areas traversed by the line; and be accompanied by an overview map of sufficient scale to show the entirety of the transmission route on no more than two (2) pages measuring eight and one-half (8.5) inches by eleven (11) inches;
- (d) Verification that the proposed route lies within a national interest electric transmission corridor designated by the secretary;
- (e) A demonstration that the transmission facility to be authorized by the certificate will be used for the transmission of electric energy in interstate commerce, and that the proposed construction or modification is consistent with the standard set out in subsection (2) of section 61-1703, Idaho Code;
- (f) A general description of project financing;
- (g) A description of the proposed construction and operation of the facilities, including the proposed date for the beginning and completion of construction and the date for commencement of service;
- (h) A list of the local governments that have already approved local land use applications for the transmission project under applicable comprehensive plans and land use ordinances;
- (i) A full statement as to whether any other permitting application filed in conjunction with the proposed project is outstanding, and if so, the nature and status of each such permitting application;
- (j) A full statement as to whether the transmitting utility is requesting the preemption of local governments that have not yet issued a final decision, have denied, or have conditioned land use applications in an allegedly unreasonable or uneconomical manner; and
- (k) A table of contents listing all exhibits and documents by their

appropriate titles in alphabetical letter designations. A table of contents will list each exhibit and document.

(2) Each application for a route certificate must be accompanied by exhibits containing the following information in substantially the same format.

(a) Exhibit A — Articles of incorporation and bylaws if the transmitting utility is a corporation. If the transmitting utility is not a corporation, then other similar documents showing the business relationship of the transmitting utility.

(b) Exhibit B — State Authorization. Proof that the transmitting utility is authorized to do business in Idaho, a statement showing the date of such authorization, the scope of the business the transmitting utility is authorized to carry on, and all limitations, if any, including an expiration date and renewal obligations.

(c) Exhibit C — Company Officials. A list of the names and business addresses of the transmitting utility's officers and directors, or similar officials if the transmitting utility is not a corporation.

(d) Exhibit D — Pending Applications and Filings. A list of applications and filings submitted by the transmitting utility that are pending before a federal, state, tribal, or local government permitting entity that affect the proposed transmission project, including explanation of any material effect that the approval or denial of these permits will have on the application for a route certificate.

(e) Exhibit E — Approved or Denied Applications. A list of applications and filings submitted by the transmitting utility to a federal, state, tribal or local government permitting entity that have been granted, conditionally granted, or denied at the time of the application that affect the proposed transmission project, including explanation of any material effect that the approval or denial of these permits will have on the application for a route certificate.

(f) Exhibit F — Local Government Preemption. A list of local government land use applications that are pending, denied or contain approval conditions to which the transmitting utility objects and seeks commission review. The transmitting utility shall indicate whether it seeks commission preemption of specific local government land use decisions or unfinished transmission route proceedings. The transmitting utility has the burden of demonstrating that the local government land use decisions will not be completed in the next sixty (60) days. If the local government land use application was denied or conditioned, the transmitting utility has the burden of demonstrating that the denial or imposed conditions were unreasonable or not economical.

(g) Exhibit G — Map of the Proposed Route. A general location map to scale showing the location of the proposed transmission route in a scale sufficient to advise the public of the exact location of the proposed route.

(h) Exhibit H — Corridor Selection Assessment. The corridor selection assessment shall explain how the transmitting utility selected the proposed route. This exhibit shall disclose whether the transmitting utility evaluated other corridors, including the specific location of such other

corridors and the reasons why those corridors were not utilized. The transmitting utility shall also provide a map in a format no larger than eleven (11) inches by seventeen (17) inches showing the selected proposed route and those route alternatives that were discarded.

(i) Exhibit I — Characteristics of the Proposed Route. The transmitting utility shall prepare an exhibit that discloses:

(i) The length of the proposed transmission line;

(ii) The proposed right-of-way width of the proposed transmission including to what extent a new right-of-way will be required or an existing right-of-way will be widened;

(iii) If the proposed transmission route follows or includes a public right-of-way, a description of where the facilities would be located within the public right-of-way, to the extent known. If the transmitting utility might locate all or part of the transmission facilities adjacent to but not within the public right-of-way, describe the reasons to justify locating the transmission facility outside the public right-of-way. The transmitting utility must include a set of clear and objective criteria and adequately demonstrate that its decision to locate the proposed transmission facility outside the public right-of-way is based on those criteria;

(iv) Streams, rivers and wetlands that may be disturbed during construction;

(v) Portions of the route located within lands that require zoning changes, variances or exceptions;

(vi) Whether the proposed transmission line would be outside of areas where historical, cultural or archeological resources are likely to exist, are listed, or determined by the state historic preservation officer to be eligible for listing on the national register of historic places; and

(vii) A description of the transmission structures and their dimensions.

(j) Exhibit J — Construction Schedule. The construction schedule shall include the dates when the transmitting utility proposes to begin construction and the estimated date when construction will be completed. This schedule should be broken down into topics including surveying, exploration or other activities. The transmitting utility shall also provide a map showing all areas that may be temporarily disturbed by any activity related to the design, construction and operation of the proposed transmission facility.

(k) Exhibit K — Map. A map identifying all areas designated for protection by a tribe, the state or federal government including, but not limited to, monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas. The map shall identify affected tribal lands and locations that may have cultural significance to any tribe. If the proposed route traverses wetland areas, provide copies of all permits related to such wetlands. The map shall denote all airports and private airstrips within ten thousand (10,000) feet of the centerline of the proposed route. The map shall show all commercial AM radio transmitters and all FM radio transmitters within ten thousand (10,000) feet of the centerline and all microwave relay stations or similar installations within two thousand (2,000) feet of the centerline of the proposed route.

(l) Exhibit L — Affected Landowners. Describe the efforts utilized to notify all affected landowners. Indicate in a quantitative fashion the amount of property already acquired or optioned from affected landowners.

(m) Exhibit M — Soils and Geotechnical Work. Describe the locations along the proposed transmission route where the transmitting utility proposes to perform site specific geotechnical work including, but not limited to, railroad crossings, major road crossings, river crossings, dead ends, or corners. Describe where geological reconnaissance and other site specific studies provide evidence of existing landslides or marginally stable slopes that could be made unstable by the planned construction. This exhibit shall also contain a map showing the location of existing and significant potential geological and soil stability hazards and problems, if any, on the proposed route and in the adjacent vicinity that could adversely affect, or be aggravated by, the construction and operation of the proposed transmission facility.

(n) Exhibit N — Seismic Hazards. The transmitting utility shall include an analysis and assessment of the seismic hazards that may occur along the proposed transmission route.

(3) The transmitting utility shall also provide any other information that the commission requests.

(4) The transmitting utility shall include, with its application for a route certificate, written prefiled testimony that supports the information contained in the application. Such testimony shall be in a form that conforms to the commission's rules of procedure.

(5) After notice and an opportunity for hearing, the commission shall issue its final order denying, granting, or granting with conditions the application for a route certificate. The commission shall issue its final order no later than twelve (12) months after the application for a route certificate is filed, unless the transmitting utility agrees to an extension in writing.

(6) The transmitting utility will make available copies of its complete application on its project website and at publicly accessible locations in each county. The application will also be available on the commission's website.

History.

I.C., § 61-1705, as added by 2007, ch. 186,
§ 1, p. 535.

STATUTORY NOTES

Cross References.

State historic preservation officer, §§ 67-4127, 67-4127A.

Effective Dates.

Section 4 of S.L. 2007, ch. 186 declared an emergency. Approved March 26, 2007.

61-1706. Construction standards. — Each transmitting utility will construct, install, operate, and maintain its transmission facility in compliance with the current edition of the national electrical safety code published by the institute of electrical and electronic engineers, inc. Transmission facilities shall be constructed and operated in a manner to best accommo-

date the public and to prevent interference with service furnished by other public utilities insofar as practical.

History.

I.C., § 61-1706, as added by 2007, ch. 186,
§ 1, p. 535.

STATUTORY NOTES

Compiler's Notes.

For more on the national electrical safety code, see <http://standards.ieee.org/about/nesc>.

Effective Dates.

Section 4 of S.L. 2007, ch. 186 declared an emergency. Approved March 26, 2007.

61-1707. Public workshops. — (1) After a transmitting utility has filed its notice of intent with the commission and before it files the application for a route certificate, the transmitting utility shall conduct informal public workshops at location(s) along the proposed transmission route. The purpose of the workshops is to provide information about the transmission project and the process for obtaining construction authority.

(2) After a transmitting utility has filed an application for a route certificate, the commission will determine whether the staff should conduct an informational public workshop at locations along the proposed transmission route. The purpose of the public workshop is for the commission staff to dispense information concerning the transmission utility's application and to advise interested persons on how to participate in the commission's review proceeding.

(3) Notice of the public workshops shall be issued a minimum of fourteen (14) days prior to the workshop to newspapers of general circulation and radio and television stations in the affected area.

History.

I.C., § 61-1707, as added by 2007, ch. 186,
§ 1, p. 535.

STATUTORY NOTES

Compiler's Notes.

The letter "s" enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 4 of S.L. 2007, ch. 186 declared an emergency. Approved March 26, 2007.

61-1708. Effect of issuance of route certification. — (1) Subject to any conditions attached to the certificate by the commission, a final commission order granting a route certificate shall bind the state and each of its agencies, divisions, bureaus, commissions, boards and local governments as to the approval of the authorized transmission route and the construction and operation of the authorized transmission facility.

(2) Issuance of a route certificate to a transmitting utility authorizes the utility to exercise the right of eminent domain pursuant to chapter 7, title 7, Idaho Code.

(3) Issuance of the route certificate shall not be construed to preempt jurisdiction of any state agency or local government over matters that are not included in and governed by the route certificate including, but not

limited to, employee health and safety, wage and hour or other labor regulations, other design and operational issues that do not relate to the siting of the transmission facilities.

History.

I.C., § 61-1708, as added by 2007, ch. 186, § 1, p. 535.

STATUTORY NOTES**Effective Dates.**

Section 4 of S.L. 2007, ch. 186 declared an emergency. Approved March 26, 2007.

61-1709. Commission procedures — Administrative remedy — Reconsideration — Judicial review. — (1) All matters arising under this chapter shall be governed by the commission's rules of procedure.

(2) The commission's proceeding to review an application for a route certificate for the construction of transmission facilities in a designated national interest electric transmission corridor shall constitute a necessary administrative remedy for a person aggrieved by a local government's final land use action on a transmitting utility's application to construct transmission facilities in a designated national interest electric transmission corridor. Judicial review shall not be available from a local government's final land use decision concerning a transmitting utility's application to construct transmission facilities in a national interest electric transmission corridor. A person aggrieved by a local government's final land use action involving the construction of a proposed transmission facility route in a national interest electric transmission corridor must participate in the commission's proceeding and seek judicial review of the commission's final order.

(3) Reconsideration of, appeal from, and stay of orders issued pursuant to this chapter shall be governed by law as for orders of the commission in other matters.

History.

I.C., § 61-1709, as added by 2007, ch. 186, § 1, p. 535.

STATUTORY NOTES**Compiler's Notes.**

Section 3 of S.L. 2007, ch. 186 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declara-

tion shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 4 of S.L. 2007, ch. 186 declared an emergency. Approved March 26, 2007.

TITLE 62

RAILROADS AND OTHER PUBLIC UTILITIES

CHAPTER.

1. RAILROAD CORPORATIONS — GENERAL PROVISIONS AND POWERS, §§ 62-101 — 62-110.
2. CONSTRUCTION OF RAILROADS, §§ 62-201 — 62-206.
3. RAILROAD CROSSINGS ON HIGHWAYS, §§ 62-301 — 62-309.
4. OPERATION OF RAILROADS, §§ 62-401 — 62-424.
5. CONDITIONAL SALES AND LEASES OF RAILROAD EQUIPMENT. [REPEALED.]
6. TELECOMMUNICATIONS ACT OF 1988, §§ 62-601 — 62-654.
7. TELEGRAPH, TELEPHONE AND ELECTRIC POWER CORPORATIONS, §§ 62-701 — 62-705.

CHAPTER.

8. TELEGRAPH AND TELEPHONE MESSAGES, §§ 62-801 — 62-805.
9. GAS CORPORATIONS, §§ 62-901 — 62-905.
10. FRAUDULENT CONSUMPTION OF GAS, §§ 62-1001 — 62-1003.
11. RIGHTS OF WAY FOR OIL AND GAS PIPELINES, §§ 62-1101 — 62-1103.
12. FENCES ALONG RAILROADS, §§ 62-1201 — 62-1207.
13. ELECTRICAL AND NATURAL AND MANUFACTURED GAS CONSUMPTION FROM PUMPING, §§ 62-1301 — 62-1305.

CHAPTER 1

RAILROAD CORPORATIONS — GENERAL PROVISIONS AND POWERS

SECTION.

- 62-101. Election of directors.
62-102. Issuance of bonds.
62-103. Bonds — Sinking fund — Conversion into stock.
62-104. Enumeration of powers.
62-105. Purchase, sale and guaranty of securities.

SECTION.

- 62-106. Bridging navigable streams.
62-107. Construction of extensions and branches.
62-108. Consolidation, sales and leases.
62-109. Extensions into the state.
62-110. Application and construction of preceding sections.

62-101. Election of directors. — Directors of railroad corporations may be elected at a meeting of the stockholders other than the annual meeting, as a majority of the fixed capital stock may determine, or as the by-laws may provide; notice thereof to be given as provided for notices of meetings to adopt by-laws in chapter 1 of title 30[, Idaho Code].

History.

R.S., § 2663; reen. R.C. & C.L., § 2793;
C.S., § 4793; I.C.A., § 60-101.

STATUTORY NOTES

Cross References.

Railroad transportation and express companies are common carriers, and all railroads are public highways, and subject to legislative control, Idaho Const., Art. XI, § 5.

Regulation by public utilities commission, title 61, Idaho Code.

Compiler's Notes.

The bracketed insertion at the end of the

section was added by the compiler to conform to the statutory citation style.

"Chapter 1 of title 30" was substituted, by the compiler, for "Chapter 186 of Compiled Statutes" on authority of § 30-161 (Acts 1929, ch. 262, § 46, p. 545; I.C.A. § 29-160) which provided that "Corporations now existing or hereafter formed shall be subject to the provisions of the act, but when special provision has been made in laws existing prior hereto

for the incorporation, organization, powers, rights, conduct, duration, dissolution, or government of any designated class of corporations, including such special classes as railroad corporations * * * this act shall not apply where inconsistent with the special provisions, but such special provisions shall govern. When in any such special acts reference is made to the laws governing business

or private corporations or to chapter 186, Compiled Statutes, it shall hereafter be taken to mean this act and its provisions. * * * " Section 30-161 was repealed by § 1 S.L. 1979, ch. 105, § 2 which act enacted the Idaho Business Corporation Act compiled as §§ 30-1-1 to 30-1-152, which itself was repealed by S.L. 1997, ch. 366..

RESEARCH REFERENCES

Am. Jur. — 65 Am. Jur. 2d, Railroads, §§ 7 to 10.

62-102. Issuance of bonds. — Railroad corporations may borrow on the credit of the corporation, and under such regulations and restrictions as the directors thereof may impose, such sums of money as may be necessary for constructing, completing, equipping, extending and improving their railroad, and all else relative thereto, and for leasing, purchasing or operating the whole or any part of the railroad of any other railroad corporation, together with the franchises, powers, immunities, and all other property or appurtenances appertaining thereto, and may issue and dispose of bonds and promissory notes therefor bearing interest at a rate not exceeding ten per cent (10%) per annum, and may also issue bonds and promissory notes bearing interest not in excess of the rate aforesaid, in payment of any debts or contracts for constructing, completing, equipping, extending and improving their road, and all else relative thereto, and for leasing, purchasing or operating the whole or any part of the railroad of any other railroad corporation, together with the franchises, powers, immunities and all other property or appurtenances appertaining thereto and to secure the payment of any or all of such bonds and notes, they may mortgage their corporate property and franchises.

History.

R.S., § 2664; reen. R.C., § 2791; am. 1911, ch. 11, § 1, p. 28; am. 1915, ch. 13, § 1, p. 49;

reen. C.L., § 2794; C.S., § 4794; I.C.A., § 60-102.

62-103. Bonds — Sinking fund — Conversion into stock. — The directors must provide a sinking fund, to be specially applied to the redemption of such bonds on or before their maturity, and may also confer on any holder of any bond or note issued, for money borrowed or in payment of any debt or contract for the construction and equipment of such road, the right to convert the principal due or owing thereon into stock of such corporation, at any time within eight (8) years from the date of such bonds, under such regulations as the directors may adopt.

History.

R.S., § 2665; reen. R.C. & C.L., § 2795; C.S., § 4795; I.C.A., § 60-103.

62-104. Enumeration of powers. — Every railroad corporation has power:

1. To cause such examination and surveys to be made as may be necessary to the selection of the most advantageous route for the railroad; and for such purposes their officers, agents and employees may enter upon the lands or waters of any person, subject to liability for all damages which they do thereto.

2. To receive, hold, take and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property which may be made to it to aid and encourage the construction, maintenance and accommodation of such railroad.

3. To purchase, or by voluntary grants or donations to receive, take possession of, hold, and use all such real estate and other property as may be necessary for the construction and maintenance of such railroad, and for all stations, depots and other purposes necessary to successfully work and conduct the business of the road.

4. To lay out its road, not exceeding nine (9) rods wide, and to construct and maintain the same, with a single or double track, and with such appendages and adjuncts as may be necessary for the convenient use of the same: provided, that any such railroad corporation may take and hold any right of way or other property, of whatever width or extent that it may acquire under the laws of congress.

5. To construct its road across, along or upon any stream of water, water course, navigable stream, street, avenue or highway, or across any railway, canal, ditch or flume which the route of its road intersects, crosses or runs along, in such manner as to afford security for life and property; but the corporation must restore the stream or water course, road, street, avenue, highway, railroad, canal, ditch or flume thus intersected to its former state of usefulness as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise.

6. To cross, intersect, join or unite its railroad with any other railroad, either before or after construction, at any point upon its route, and upon the grounds of such other railroad corporation with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connections; and every corporation whose railroad is, or shall be hereafter, intersected by any new railroad, must unite with the owners of such new railroad in forming such new intersections and connections, and grant facilities therefor. And if the two (2) corporations cannot agree upon the amount of compensation to be made therefor, or the points or the manner of such crossings, intersections and connections, the same must be ascertained and determined as is provided in the Code of Civil Procedure.

7. To purchase lands, timber, stone, gravel or other materials to be used in the construction and maintenance of its road, and all necessary appendages and adjuncts, or acquire them in the manner provided in the Code of Civil Procedure for the condemnation of lands; and to change the line of its road in whole or in part whenever a majority of the directors so determine, as is provided hereinafter, but no such change must vary the general route of such road as contemplated in its articles of incorporation.

8. To carry persons and property on their railroad and receive tolls or compensation therefor.

9. To erect and maintain all necessary and convenient buildings, stations, depots, fixtures and machinery for the accommodation and use of their passengers, freight and business.

10. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor within the limits prescribed by law, and subject to alteration, change or amendment by the legislature at any time.

11. To regulate the force and speed of their locomotives, cars, trains or other machinery used and employed on their road, and to establish, execute and enforce all needful and proper rules and regulations for the management of its business transactions usual and proper for railroad corporations.

History.

R.S., § 2666; reen. R.C. & C.L., § 2796;
C.S., § 4796; I.C.A., § 60-104.

STATUTORY NOTES

Cross References.

Eminent domain proceedings, § 7-701 et seq.

Forest fires, duties of railroads, § 38-118.

Forest fires, operation of engine without adequate protection, penalty, § 38-121.

Forest fires or fires on right of way, railroad employees to report, penalty, § 38-119.

Compiler's Notes.

The code of civil procedure, referred to in this section, is a division of the Idaho Code, consisting of Titles 1 through 13.

JUDICIAL DECISIONS

ANALYSIS

Eminent domain.

Owning real estate for non-operational purposes.

Right of way location.

Eminent Domain.

A railroad has the power to institute eminent domain proceedings to acquire needed property under subsections (7) and (9). *Burlington N., Inc. v. Finneman*, 96 Idaho 530, 530 P.2d 940 (1974).

Owning Real Estate for Non-operational Purposes.

Trial court's determination that a railroad could not own real property for non-operational purposes was in error based on the statutory scheme and case law; this section, which enumerated powers of railroad corporations, was intended as an expansion of a railroad's powers, not a limitation. *Union Pac.*

R.R. Co. v. Ethington Family Trust, 137 Idaho 435, 50 P.3d 450 (2002).

Right of Way Location.

The power to locate a railroad right of way by a corporation being vested in its board of directors, some official corporate action is necessary before such corporation can make a valid location. *Blackwell Lumber Co. v. Empire Mill Co.*, 29 Idaho 421, 160 P. 265, appeal dismissed, 244 U.S. 651, 37 S. Ct. 744, 61 L. Ed. 2d 1372 (1916).

Cited in: *Idaho N. Pac. R.R. v. Post Falls Lumber & Mfg. Co.*, 20 Idaho 695, 119 P. 1098 (1911); *Northern Pac. R.R. v. Hirzel*, 29 Idaho 438, 161 P. 854 (1916).

RESEARCH REFERENCES

Am. Jur. — 65 Am. Jur. 2d, Railroads, § 9.
C.J.S. — 74 C.J.S., Railroads, §§ 98 to 105.

A.L.R. — Deed to railroad company as conveyance fee or easement. 6 A.L.R.3d 973.

Validity, construction, and effect of agree-

ment, in connection with real estate lease or license by railroad, for exemption from liability or for indemnification by lessee or licensee, for consequences or railroad's own negligence. 14 A.L.R.3d 446.

62-105. Purchase, sale and guaranty of securities. — Any railroad corporation, whether chartered by, or organized under, the laws of this state or of the territory of Idaho, or of the United States, or of any other state or territory, may take, purchase, hold, sell and dispose of, or guarantee the payment of, the bonds and securities of any other railroad corporation whose line of railroad is continuous of, or by lease, traffic contract, or otherwise connected with, its own line.

History. 1890-1891, p. 16, § 1; reen. 1899, p. 10, § 1; reen. R.C. & C.L., § 2797; C.S., § 4797; I.C.A., § 60-105.

62-106. Bridging navigable streams. — Any railroad corporation heretofore duly organized and incorporated under the laws of this state, or of the United States, or of any other state or territory, or which may hereafter be duly incorporated and organized under the laws of this state, or of the United States, or of any other state or territory, and authorized to do business in this state and to construct and operate railroads therein, shall have, and hereby is given, the right to build and construct, possess and own, bridges across the navigable streams and waters within this state, over or across which the projected line or lines of railway of such railroad corporation, or either of them, will run: provided, that said bridges are to be constructed in good faith for the purpose of being made a part of the constructed line of said railroad, or a part of any of the line thereof to be constructed and in course of construction, and to be used by such railroad corporation as a part of its line of railroad so constructed; or to be constructed, for the more convenient, expeditious and safe operation thereof: provided further, that such bridges shall be so constructed as to not interfere with, impede or obstruct the navigation of such stream or navigable waters, and shall comply with, and be subject to, the acts of congress relating to navigable streams, and the rules and regulations of the executive departments.

History. 1890-1891, p. 32, § 1; reen. 1899, p. 20, § 1; reen. R.C. & C.L., § 2798; C.S., § 4798; I.C.A., § 60-106.

JUDICIAL DECISIONS

Obstructing Navigation. Whether a railroad company, in bridging a stream, has unreasonably and unnecessarily impaired or obstructed navigation is a question of fact. *Idaho N. Pac. R. Co. v. Post Falls Lumber & Mfg. Co.*, 20 Idaho 695, 119 P. 1098 (1911).

RESEARCH REFERENCES

Am. Jur. — 65 Am. Jur. 2d, Railroads, § 36.

62-107. Construction of extensions and branches. — Any railroad corporation chartered by or organized under the laws of this state, or of any state or territory, or under the laws of the United States, and authorized to do business in this state, may extend its railroad from any point named in

its charter or articles of incorporation, or may build branch roads, either from any point on its line of road or from any point on the line of any other railroad connecting, or to be connected, with its road, the use of which other road between such points and the connection with its own road, such corporation shall have secured by lease or agreement for a term of not less than ten (10) years from its date. Before making any such extension, or building any such branch road, such corporation shall, by resolution of its directors or trustees, to be entered in the record of its proceedings, designate the route of such proposed extension or branch by indicating the place from and to which said railroad is to be constructed, and the estimated length of such railroad, and the name of each county in this state through or into which it is constructed or intended to be constructed, and file a copy of such record, certified by the president and secretary, in the office of the secretary of state, who shall indorse thereon the date of filing thereof and record the same. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch, and receive aid thereto, which it would have had if it had been authorized in its charter or articles of incorporation.

History.

§ 1; reen. R.C. & C.L., § 2799; C.S., § 4799;
1890-1891, p. 124, § 1; reen. 1899, p. 81, I.C.A., § 60-107.

STATUTORY NOTES**Cross References.**

Secretary of state, § 67-901 et seq.

RESEARCH REFERENCES

Am. Jur. — 65 Am. Jur. 2d, Railroads,
§ 68.

62-108. Consolidation, sales and leases. — Any such railroad corporation may consolidate its stock, franchises and property with any other railroad corporation, whether within or without the state, when such other railroad corporation does not own any competing line of railroad, upon such terms as may be agreed upon, and become one (1) corporation, by any name selected, which, within this state, shall possess all of the powers, franchises, and immunities, including the right of further consolidation with other corporations under this section, and be subject to all the liabilities and restrictions such as such corporations peculiarly possess, or were subject to at the time of consolidation by the laws then in force applicable to them or either of them. Articles stating the terms of consolidation shall be approved by each corporation by a vote of the stockholders owning a majority of the stock, in person or by proxy, at the regular annual meeting thereof, or a special meeting called for that purpose in the manner provided by the by-laws of the respective consolidating corporations, or by the consent, in writing, of such stockholders annexed to such articles; and a copy thereof, with a copy of the records of such approval or such consent, and accompanied by lists of their stockholders and the numbers of shares held by each,

duly certified by the respective presidents and secretaries, with the respective corporate seals of such corporations affixed, shall be filed for record in the office of the secretary of state before any such consolidation shall have any validity or effect.

Any railroad corporation whose line is wholly or in part within this state, whether chartered by or organized under the laws of this state, or of any other state or territory, or of the United States, may lease or purchase and operate the whole or any part of the railroad of any other railroad corporation, together with the franchises, powers, immunities and all other property or appurtenances appertaining thereto; (or any railroad company may sell or lease the whole or any part of its railroads or branches within or without this state, constructed, or to be constructed, together with all property and rights, privileges and franchises pertaining hereto, to any railroad company organized or existing pursuant to the laws of the United States or of this state, or of any other state or territory of the United States); and all such purchases or leases heretofore made or entered into are for all intents and purposes hereby ratified and confirmed: provided, that in no case shall the capital stock of the company formed by such consolidation exceed the sum of the capital stock of the companies so consolidated, at the par value thereof, nor shall any bonds or other evidences of debt be issued as a consideration for or in connection with such consolidation.

History. § 2; am. 1901, p. 214, § 1; reen. R.C. & C.L., 1890-1891, p. 124, § 2; reen. 1899, p. 81, § 2800; C.S., § 4800; I.C.A., § 60-108.

STATUTORY NOTES

Cross References. Secretary of state, § 67-901 et seq.
Domestic railroad or other corporations consolidating with foreign corporations do not thereby become foreign corporations, Idaho Const., Art. XI, § 14.

Compiler's Notes.
The words enclosed in parentheses so appeared in the law as enacted.

RESEARCH REFERENCES

Am. Jur. — 65 Am. Jur. 2d, Railroads, §§ 156 to 180. Situs of aircraft, rolling stock, and vessels for purposes of property taxation. 3 A.L.R.4th 837.
C.J.S. — 74 C.J.S., Railroads, § 477 et seq.
A.L.R. — Dissenting stockholders, valuation of stock of in case of consolidation or merger of corporations. 48 A.L.R.3d 430.

62-109. Extensions into the state. — Any railroad corporation chartered by or organized under the laws of the United States, or of any state or territory, whose constructed railroad shall reach or intersect the boundary line of this state at any point, may extend its railroad into the state from any such point or points to any place or places within this state, and may build branches from any point on such extension. Before making such extension, or building any such branch road, such corporation shall, by resolution of its directors or trustees, to be entered in the record of its proceedings, designate the route of such proposed extension or branch by indicating the place from and to which such extension or branch is to be constructed, and the

estimated length of such extension or branch, and the name of each county in this state through or into which it is constructed or intended to be constructed, and file a copy of such record, certified by the president and secretary, in the office of the secretary of state, who shall indorse thereon the date of filing thereof and record the same. Thereupon such corporation shall have all the rights and privileges to make such extension, or build such branch, and receive such aid thereto as it would have had had it been authorized so to do by articles of incorporation duly filed in accordance with the laws of this state. It shall be the duty of railroad companies, when intersecting or crossing any other railroad in this state, to so arrange their sidetracks or switches that cars or freight may be readily transferred from one track to the other at the option of the shipper.

History. § 3; reen. R.C. & C.L., § 2801; C.S., § 4801;
1890-1891, p. 124, § 3; reen. 1899, p. 81, I.C.A., § 60-109.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

RESEARCH REFERENCES

Am. Jur. — 65 Am. Jur. 2d, Railroads,
§ 92.

62-110. Application and construction of preceding sections. — The three (3) preceding sections shall not apply to any corporations before such corporations shall have filed an acceptance of the provisions of the state constitution, as provided in section 7, of article 11, of the constitution, nor shall anything in said sections contained ever be so construed as to exempt any railroad property from taxation.

History. §§ 4, 5; am. R.C., § 2802; reen. C.L., § 2802;
1890-1891, p. 124, §§ 4, 5; reen. 1899, p. 81, C.S., § 4802; I.C.A., § 60-110.

CHAPTER 2

CONSTRUCTION OF RAILROADS

SECTION.

62-201. Map and profile.

62-202. Altering location.

62-203. Time for commencing and completing construction.

62-204. Crossings and intersections.

SECTION.

62-205. Use of streets — Consent of authorities.

62-206. Crossing other railroads and highways.

62-201. Map and profile. — Every railroad corporation in this state must, within a reasonable time after its road is finally located, cause to be made a map and profile thereof, and of the land acquired for the use thereof, and the boundaries of the several counties through which the road may run, and file the same in the office of the secretary of state; and also like maps of

the parts thereof located in different counties, and file the same in the office of the recorder of the county in which such parts of the road are, there to remain of record forever. The maps and profiles must be certified by the chief engineer, the acting president and secretary of such company, and copies of the same, so certified and filed, be kept in the office of the secretary of the corporation, subject to examination by all parties interested.

History.

R.S., § 2667; reen. R.C. & C.L., § 2803;
C.S., § 4803; I.C.A., § 60-201.

STATUTORY NOTES**Cross References.**

Secretary of state, § 67-901 et seq.

RESEARCH REFERENCES

C.J.S. — 74 C.J.S., Railroads, §§ 130 to 132.

62-202. Altering location. — If, at any time after the location of the line of the railroad and the filing of the maps and profiles thereof, as provided in the preceding section, it appears that the location can be improved, the directors may, as provided in subdivision 7, of section 62-104[, Idaho Code], alter or change the same, and cause new maps and profiles to be filed, showing such changes, in the same offices where the originals are on file, and may proceed, in the same manner as the original location was acquired, to acquire and take possession of such new line, and must sell or relinquish the lands owned by them for the original location, within five (5) years after such change. No new location as herein provided, must be run so as to avoid any points named in their articles of incorporation.

History.

R.S., § 2668; reen. R.C. & C.L., § 2804;
C.S., § 4804; I.C.A., § 60-202.

STATUTORY NOTES**Compiler's Notes.**

compiler to conform to the statutory citation style.

62-203. Time for commencing and completing construction. — Every railroad corporation must, within two (2) years after filing its original articles of incorporation, begin the construction of its road, and must every year thereafter complete and put in full operation at least five (5) miles of its road, until the same is fully completed; and upon its failure so to do, for the period of one (1) year, its right to extend its road beyond the point then completed is forfeited.

History.

R.S., § 2669; reen. R.C. & C.L., § 2805;
C.S., § 4805; I.C.A., § 60-203.

62-204. Crossings and intersections. — Whenever the track of one (1) railroad intersects or crosses the track of another railroad, whether the same be a street railroad, wholly within the limits of a city or town, or other railroad, the rails of either or each road must be so cut and adjusted as to permit the passage of the cars on each road with as little obstruction as possible; and in case the persons or corporations owning the railroads cannot agree as to the compensation to be made for cutting and adjusting the rails, the condemnation of the right of way over the one for the use of the other road may be had in proceedings under the Code of Civil Procedure, and the damages assessed and the right of way granted as in other cases.

History.

R.S., § 2670; reen. R.C. & C.L., § 2806;
C.S., § 4806; I.C.A., § 60-204.

STATUTORY NOTES

Cross References.

Condemnation proceedings, § 7-701 et seq.
Intersection of irrigation works with railroads, § 43-906.
Spurs and switch connections, §§ 61-324, 61-325, 61-510, 61-511.

Compiler's Notes.

The code of civil procedure, referred to in this section, is a division of the Idaho Code, consisting of Titles 1 through 13.

JUDICIAL DECISIONS

Cited in: Haner v. Northern Pac. Ry., 7 Idaho 305, 62 P. 1028 (1900).

RESEARCH REFERENCES

Am. Jur. — 65 Am. Jur. 2d, Railroads, §§ 134 to 137.

62-205. Use of streets — Consent of authorities. — No railroad corporation must use any street, alley or highway, or any of the land or water within any incorporated city or town, unless the right to so use the same is granted by a two-thirds vote of the town or city authority from which the right must emanate.

History.

R.S., § 2671; reen. R.C. & C.L., § 2807;
C.S., § 4807; I.C.A., § 60-205.

STATUTORY NOTES

Cross References.

Railroads not to be constructed within municipal corporations without the consent of

the local authorities, Idaho Const., Art. XI, § 11.

JUDICIAL DECISIONS

Cited in: Trueman v. Village of St. Maries, 21 Idaho 632, 123 P. 508 (1912).

RESEARCH REFERENCES

Am. Jur. — 65 Am. Jur. 2d, Railroads, § 42.

62-206. Crossing other railroads and highways. — Whenever the track of such railroad crosses a railroad or highway, such railroad or highway may be carried under, over, or on a level with the track as may be most expedient; and in cases where an embankment or cutting necessitates a change in the line of such railroad or highway, the corporation may take such additional lands and materials as are necessary for the construction of such road or highway on such new line. If such other necessary lands cannot be had otherwise, they may be condemned as provided in the Code of Civil Procedure; and when compensation is made therefor, the same becomes the property of the corporation.

History.

R.S., § 2672; reen. R.C. & C.L., § 2808; C.S., § 4808; I.C.A., § 60-206.

STATUTORY NOTES

Cross References.

Condemnation proceedings, § 7-701 et seq.
Railroads intersecting and crossing other railroads, § 62-109.

Compiler's Notes.

The code of civil procedure, referred to in this section, is a division of the Idaho Code, consisting of Titles 1 through 13.

JUDICIAL DECISIONS

Maintenance of Private Crossing.

Where railroad in obtaining grant of right of way agrees to maintain crossing over its road, it cannot thereafter complain that the

maintenance of the crossing was more burdensome than they anticipated. *Fox v. Spokane Internat. Ry. Co.*, 26 Idaho 60, 140 P. 1103 (1914).

RESEARCH REFERENCES

Am. Jur. — 65 Am. Jur. 2d, Railroads, § 42.

CHAPTER 3

RAILROAD CROSSINGS ON HIGHWAYS

SECTION.

- 62-301. Crossings of state highways and railroads — Elimination or alteration — Cost.
- 62-302. Complaint to public utilities commission.
- 62-303. Crossings not on state highways — Elimination or alteration.
- 62-304. Hearing and order by public utilities commission.
- 62-304A. Creation of railroad grade crossing protection fund.
- 62-304B. Administration of the railroad

SECTION.

- grade crossing protection account.
- 62-304C. Apportionment of costs.
- 62-304D. Establishing priorities for hazardous railroad locations — Accident reports to be filed with Idaho transportation department.
- 62-305. Closing and abandonment of crossings upon relocation of highways or construction of underpasses or overpasses or otherwise — Hearings.

SECTION.

62-306. Construction and maintenance of
railroad grade crossings.
62-307. Permission for new crossing of high-
ways and railroads.

SECTION.

62-308. Enforcement.
62-309. Separability.

62-301. Crossings of state highways and railroads — Elimination or alteration — Cost. — Whenever a state highway crosses or shall hereafter cross one or more railroads, and whenever the Idaho transportation department shall determine that the elimination of a grade crossing, whether by separation of grades or by relocation of the highway or railroad or both, or the reconstruction of an existing structure under or over the railroad or railroads, is necessary for public safety and convenience or for the proper construction or reconstruction of said state highway, the said Idaho transportation department shall have full authority to negotiate with and enter into an agreement with the railroad company or companies, and with any other persons and authorities concerned, to provide for the method of elimination or alteration and for the division of the cost thereof between the state and the railroad company or companies and any other parties to such agreement, such cost to include all changes of highway or railroads made necessary by the existence of the crossing and by the elimination or alteration thereof, and the acquisition of any right of way required therefor.

History.

1929, ch. 151, § 1, p. 274; I.C.A., § 60-301;

am. 1967, ch. 11, § 1, p. 17; am. 1974, ch. 12,
§ 89, p. 61.

STATUTORY NOTES**Cross References.**

Idaho transportation department, § 40-501
et seq.

RESEARCH REFERENCES

Am. Jur. — 65 Am. Jur. 2d, Railroads,
§ 138 et seq.

A.L.R. — Use or improvement of highway

as establishing grade necessary to entitle
abutting owner to compensation and subse-
quent change. 2 A.L.R.3d 985.

62-302. Complaint to public utilities commission. — If the Idaho transportation department shall be unable to agree with the railroad company or companies upon the elimination or alteration to be made or upon the division of the cost of such elimination or alteration, said department, or railroad company or companies, shall make written complaint to the public utilities commission, setting forth the changes and alteration desired and the necessity therefor.

History.

1929, ch. 151, § 2, p. 274; I.C.A., § 60-302;

am. 1967, ch. 11, § 2, p. 17; am. 1974, ch. 12,
§ 90, p. 61.

62-303. Crossings not on state highways — Elimination or alteration. — Whenever a highway not a state highway crosses one or more railroads, the local authorities in their respective jurisdictions, or railroad

company or companies, shall have the same authority and perform the same duties with respect to the elimination or alteration of such crossing as are granted to and required of the Idaho transportation department and railroad company or companies by this chapter.

History. am. 1967, ch. 11, § 3, p. 17; am. 1974, ch. 12, 1929, ch. 151, § 3, p. 274; I.C.A., § 60-303; § 91, p. 61.

62-304. Hearing and order by public utilities commission. — Whenever a complaint is made to the public utilities commission by the Idaho transportation department, or by a railroad company or companies, or upon motion by the Idaho public utilities commission, or local authorities in their respective jurisdictions with respect to the elimination or alteration of a crossing of a highway with one or more railroads the said commission shall and is hereby authorized and empowered to hear and determine such complaint in accordance with the provisions of chapters 1 to 7, inclusive, title 61, Idaho Code, taking into consideration the necessity for such elimination or alteration and the cost thereof, the location of any crossing and the manner in which it shall be constructed or reconstructed and maintained, or whether a crossing is to be eliminated and the provisions therefor, and shall make such order in relation thereto as shall be equitable, and shall determine what portion of the cost shall be paid by any party to the controversy: provided, that no cost shall be charged to the Idaho public utilities commission, and that no portion of the cost of eliminating or altering a crossing not on a state highway shall be ordered to be paid out of the state highway fund [account].

History. am. 1967, ch. 11, § 4, p. 17; am. 1974, ch. 12, 1929, ch. 151, § 4, p. 274; I.C.A., § 60-304; § 92, p. 61.

STATUTORY NOTES

Cross References. the name of the referenced account. See § 40-702.
Idaho transportation department, § 40-501 et seq.

Compiler's Notes. **Effective Dates.**
The bracketed insertion at the end of this section was added by the compiler to correct Section 5 of S.L. 1967, ch. 11 declared an emergency. Approved February 6, 1967.

62-304A. Creation of railroad grade crossing protection fund. — In order to promote the public safety at railroad grade crossings and public streets, roads or highways and to provide for the payment of all or part of the costs of installing, reconstructing, maintaining or improving automatic or other safety appliances, signals or devices at railroad grade crossings of public streets, roads or highways over the tracks of any railroad company or companies, or to support public education and safety programs which promote awareness of public safety at railroad grade crossings of public streets, roads or highways, there is hereby created in the dedicated fund in the state treasury a fund to be known as the railroad grade crossing protection fund.

History.

I.C., § 62-304A, as added by 1979, ch. 218,
§ 5, p. 603; am. 2002, ch. 76, § 1, p. 173.

62-304B. Administration of the railroad grade crossing protection account. — Subject to the provisions of section 62-304, Idaho Code, the Idaho transportation department is charged with sole and exclusive administration of the railroad grade crossing protection account.

History.

I.C., § 62-304B, as added by 1979, ch. 218,
§ 6, p. 603.

STATUTORY NOTES**Cross References.**

Idaho transportation department, § 40-501
et seq.

62-304C. Apportionment of costs. — The Idaho transportation department shall follow federal guidelines on such grade crossing improvement projects as are to be funded in whole or in part under any federal act, and where the project is not funded entirely by federal funds, the Idaho transportation department may use moneys in the railroad grade crossing protection fund to pay all or a portion of the matching funds required.

On projects where federal-aid funds are not being utilized in whole or in part, the Idaho transportation department shall apportion the entire cost of the engineering, installation, reconstruction or improvement of any signal or device as described in section 62-304A, Idaho Code, between the railroad company or companies and the Idaho transportation department or the local authority, in proportion to the respective benefits to be derived. The Idaho transportation department may use moneys in the railroad grade crossing protection fund to pay all or a portion of the cost apportioned to the Idaho transportation department or local authority involved.

The railroad company or companies owning the track or tracks upon which the improvement shall be made shall perform all construction and maintenance of the signals or devices and shall be reimbursed for such part of said costs not to be borne by it, but in allocating said costs and dividing the same among the parties involved, the Idaho transportation department shall limit the amount to be charged against the railroad company or companies to a maximum of ten percent (10%) of the total cost of such construction, unless the crossing is a new one proposed by the railroad company or companies, in which case the entire cost of construction shall be apportioned to said railroad company or companies.

Upon application to the Idaho transportation department, and with the approval of the Idaho transportation board, a maximum of twenty-five thousand dollars (\$25,000) annually may be provided from the railroad grade crossing protection fund to support public education and safety programs which promote awareness of public safety at railroad grade crossings of public streets, roads or highways over the tracks of any railroad company or companies.

History.

I.C., § 62-304C, as added by 1979, ch. 218, § 7, p. 603; am. 1994, ch. 315, § 2, p. 1001; am. 2002, ch. 76, § 2, p. 173.

STATUTORY NOTES**Cross References.**

Idaho transportation department, § 40-501 et seq.

62-304D. Establishing priorities for hazardous railroad locations — Accident reports to be filed with Idaho transportation department. — In its administration of the railroad grade crossing protection account, the Idaho transportation department shall establish a priority rating for railroad crossings, assigning priority first to the most hazardous railroad crossing locations, giving proper weight to traffic volume over such crossings by school buses and vehicles transporting dangerous commodities and if the Idaho transportation department determines from all of the evidence that public safety does not require installation of protective signals or devices at a crossing under consideration, it may refuse to order the installation of signals or devices or may defer their installation until more hazardous crossings have been protected. Every railroad company shall file with the Idaho transportation department a copy of each report of accident which is filed with the Idaho public utilities commission pursuant to the provisions of section 61-517, Idaho Code, for the Idaho transportation department to consider in making its determination. No part of any report filed with the Idaho transportation department as required in this section, or of any record, or a copy thereof, of any hearing held under the provisions of this act or of the determination provided for in this section and no finding, conclusion or order made by the Idaho transportation department in the administration of this act shall be used as evidence in any trial, civil or criminal, arising out of an accident at or in the vicinity of any crossing prior to installation of signals or other warning devices pursuant to an order of the Idaho transportation department as a result of any such investigation or proceeding.

History.

I.C., § 62-304D, as added by 1979, ch. 218, § 8, p. 603.

STATUTORY NOTES**Cross References.**

Idaho transportation department, § 40-501 et seq.

218, which is compiled as §§ 61-515, 61-608, and 62-304A to 62-304D.

Compiler's Notes.

The term "this act" refers to S.L. 1979, ch.

62-305. Closing and abandonment of crossings upon relocation of highways or construction of underpasses or overpasses or otherwise — Hearings. — Wherever and whenever the location of any state highway, or other public street, road or highway, has been or shall be

changed, the result of which has changed or will change the location of the place where such street, road or highway crosses any railroad tracks at grade, and a new crossing at grade or an overpass or underpass has been or shall be constructed at such new location, or whenever the closing and abandonment of an existing crossing is in the interest of and reasonably necessary for the public safety, or an existing crossing is no longer reasonably necessary as a public crossing for any reason, then the old grade crossing shall be deemed to be unnecessary and may be eliminated and discontinued. In the event any objection be made to the elimination and discontinuance of said old grade crossing, the Idaho transportation board or the owners, operators, or lessees of any such railroad, or both, may, upon the completion and placing in operation of said new grade crossing, overpass or underpass, or whenever for any other reason a crossing is to be closed and abandoned, the public authority having jurisdiction over the street, road or highway, or the owners, operators, or lessees of any such railroad, or both, shall petition the public utilities commission for an order eliminating and discontinuing said old grade crossing, whether said change of location has been made or construction of an underpass or overpass completed before or after the passage of this act, and said commission shall be and is hereby authorized and empowered to hear and determine said petition in accordance with the provisions of chapters 1 to 7, inclusive, title 61, Idaho Code, and if upon hearing duly had it shall find and determine that the closing and abandonment of such grade crossing is in the interest of, and reasonably necessary for the public safety, or that said crossing is no longer reasonably needed, it shall make an order authorizing the closing and abandonment of said crossing. Any order made by the commission concerning said matter shall be enforceable and subject to review in the same manner as other orders of the commission. Upon any order of closing and abandonment becoming final, said grade crossing may be closed either by the public authority having jurisdiction over the street, road or highway or by the owner, operator or lessee of such railroad.

History.

I.C.A., § 60-304A, as added by 1939, ch.

159, § 1, p. 284; am. 1974, ch. 12, § 93, p. 61;
am. 1976, ch. 221, § 1, p. 794.

STATUTORY NOTES**Cross References.**

Idaho transportation department, § 40-501
et seq.

refers to S.L. 1939, ch. 159, which is codified
as this section and was effective May 6, 1939.

Compiler's Notes.

The term "this act" in the second sentence

62-306. Construction and maintenance of railroad grade crossings. — Whenever a state or county highway crosses or shall hereafter cross a railroad at grade, the railroad company shall at its own expense construct and maintain that portion of such highway between the rails and for a distance of not less than two (2) feet outside the outer rails. The crossing shall be planked or surfaced with other suitable material for the full width of the traveled way, including shoulders, and shall be maintained at all

times in a smooth and firm condition. Where a public agency having jurisdiction of the highway crossing the railroad wishes to have the crossing surfaced with material of higher quality, the public agency and the railroad company may agree that the railroad company install the material and that the additional cost, over and above the cost of the railroad company's standard installation, may be paid for by the public agency with public funds.

History. am. 1953, ch. 198, § 1, p. 308; am. 1977, ch. 1929, ch. 151, § 5, p. 274; I.C.A., § 60-305; 79, § 1, p. 161.

62-307. Permission for new crossing of highways and railroads.

— No new railroad and no alteration or extension of an existing railroad shall hereafter cross any highway at grade, and no new highway shall hereafter cross any railroad at grade without the written permission of the Idaho transportation board first having been obtained. Neither a side track, team track, passing track nor house track shall be deemed a railroad within the meaning of this section. The term highway as used in this section shall not include streets and alleys in cities.

History. 1929, ch. 151, § 7, p. 274; I.C.A., § 60-307; am. 1974, ch. 12, § 94, p. 61.

STATUTORY NOTES

Cross References. that the act should take effect on and after July 1, 1974.
Idaho transportation department, § 40-501 et seq.

Effective Dates. Section 124 of S.L. 1974, ch. 12 provided

62-308. Enforcement. — Except as otherwise herein provided, the provisions of this chapter shall be enforced in the same manner as orders of the public utilities commission in regard to railways are enforced.

History. 1929, ch. 151, § 7, p. 274; I.C.A., § 60-307.

62-309. Separability. — If any part or parts of this chapter shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this chapter.

History. 1929, ch. 151, § 9, p. 274; I.C.A., § 60-308.

STATUTORY NOTES

Effective Dates. Section 10 of S.L. 1929, ch. 151 declared an emergency. Approved March 11, 1929.

CHAPTER 4

OPERATION OF RAILROADS

SECTION.

- 62-401. Checking baggage.
- 62-402. Accommodations for passengers and freight.
- 62-403. Refusal to accept passengers or freight.
- 62-404. Accommodations to be sufficient.
- 62-405. Printed rules and regulations.
- 62-406. Erection and maintenance of fences — Liability for damages.
- 62-407. Crossings and cattle guards.
- 62-408. Claim for damages.
- 62-409. Recovery of attorneys' fees.
- 62-410. Book of descriptions of stock killed.
- 62-411. Disposal of carcass.
- 62-412. Bell or whistle.
- 62-413. Ejection of passengers for misconduct — Penalty for employee's violations.
- 62-414. Report of delayed trains. [Repealed.]

SECTION.

- 62-415. Report of delayed trains — Notice at stations. [Repealed.]
- 62-416. Report of delayed trains — Failure to give notice a misdemeanor — Penalty. [Repealed.]
- 62-417. Report of delayed trains — Punishment of corporation. [Repealed.]
- 62-418. Railroads and other carriers — Employee inspecting shipments to give shipper copy of report.
- 62-419. Penalty for failure to give report or making false report.
- 62-420. "Track motor cars" defined.
- 62-421. Equipment of track motor cars with specified electric lights.
- 62-422. Equipment of track motor cars.
- 62-423. Violations as to equipment penalized.
- 62-424. Hearing on abandonment.

62-401. Checking baggage. — A check must be affixed to every package or parcel of baggage when taken for transportation by any agent or employee of a railroad corporation, and a duplicate thereof given to the passenger or person delivering the same in his behalf; and if such check is refused on demand, the railroad corporation must pay to such passenger the sum of twenty dollars (\$20.00) to be recovered in an action for damages; and no fare or toll must be collected or received from such passenger, and if such passenger has paid his fare the same must be returned by the conductor in charge of the train; and on producing the check, if his baggage is not delivered to him by the agent or employee of the railroad corporation he may recover the value thereof from the corporation.

History.

R.S., § 2674; reen. R.C. & C.L., § 2809;
C.S., § 4809; I.C.A., § 60-401.

STATUTORY NOTES

Cross References.

Public utilities law, definition of railroad corporations, § 61-111.

Unclaimed property held for charges, § 55-1401 et seq.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Liability of company.

Constitutionality.

Requirement of this section that railroad company shall not collect toll or fare from

passenger when it fails, neglects or refuses to deliver to him a check for his baggage is valid and binding upon such company as a part of

the penalty for its failure to comply with the statute and is not taking of property without due process of law. *Tarr v. Oregon Short Line R.R.*, 14 Idaho 192, 93 P. 957 (1908).

Liability of Company.

Where railroad company has no night agent at station to receive and check baggage, but stops its train at such station and takes on a passenger and his baggage, and after the

passenger boards the train and demands check for his baggage and declines to pay his fare or deliver up his ticket until he receives such check, and the employees of the company in charge of the train refuse to deliver a baggage check, and, on the contrary, eject the passenger from the train, the railroad company will be held liable in damages for the tort so committed. *Tarr v. Oregon Short Line R.R.*, 14 Idaho 192, 93 P. 957 (1908).

RESEARCH REFERENCES

Am. Jur. — 14 Am. Jur. 2d, Carriers, § 1181 et seq.; 65 Am. Jur. 2d, Railroads, § 122.

A.L.R. — Liability of bank or safe-deposit

company for its employee's theft or misappropriation of contents of safe-deposit box. 39 A.L.R.4th 543.

62-402. Accommodations for passengers and freight. — Every such corporation must start and run their cars for the transportation of persons and property, at such regular times as they shall fix by public notice, and must furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or is offered for transportation at the place of starting, at the junction of other railroads and at siding and stopping places established for receiving and discharging way passengers and freight; and must take, transport and discharge such passengers and property at, from and to such places, on the due payment of toll, freight or fare therefor.

History.

R.S., § 2675; reen. R.C. & C.L., § 2810; C.S., § 4810; I.C.A., § 60-402.

STATUTORY NOTES

Cross References.

Equal transportation rights guaranteed

and discriminations prohibited, Idaho Const., Art. XI, § 6.

JUDICIAL DECISIONS

Common Law Duties.

Common law duties of carriers are not supplanted or limited by Idaho statutes.

Johnson v. Chicago, M., St. P. & Pac. R.R., 400 F.2d 968 (9th Cir. 1968).

RESEARCH REFERENCES

A.L.R. — Validity, construction and effect of agreement, in connection with real estate lease or license by railroad, for exemption from liability or for indemnification by lessee or licensee, for consequences of railroad's own negligence. 14 A.L.R.3d 446.

Liability because of improper loading, of railroad to consignee or his employee injured while unloading car. 29 A.L.R.3d 1039.

Railroad's liability for injury to or death of child climbing or playing on moving train other than as paying or proper passenger. 35 A.L.R.3d 9.

Who is "pedestrian" entitled to rights and subject to duties provided by traffic regulations or judicially stated. 35 A.L.R.4th 1117.

62-403. Refusal to accept passengers or freight. — In case of refusal

by such corporation or its agents so to take and transport any passengers or property, or to deliver the same at the regular appointed places, such corporation must pay to the party aggrieved all damages which are sustained thereby, with costs of suit.

History.

R.S., § 2676; reen. R.C. & C.L., § 2811;
C.S., § 4811; I.C.A., § 60-403.

STATUTORY NOTES**Cross References.**

Ejection of passengers for misconduct,
§ 62-413.

JUDICIAL DECISIONS**Common-Law Duties.**

Common-law duties of carriers are not sup-
planted or limited by Idaho statutes. Johnson

v. Chicago, M., St. P. & Pac. R.R., 400 F.2d 968
(9th Cir. 1968).

RESEARCH REFERENCES

Am. Jur. — 13 Am. Jur. 2d, Carriers, § 199
et seq; 14 Am. Jur. 2d, Carriers, § 1037 et seq.

62-404. Accommodations to be sufficient. — Every railroad corporation must furnish on the inside of its passenger cars, sufficient room and accommodations for all passengers to whom tickets are sold for any one trip, and for all persons presenting tickets entitling them to travel thereon; and when fare is taken for transporting passengers on any baggage, wood, gravel or freight car, the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger cars.

History.

R.S., § 2677; reen. R.C. & C.L., § 2812;
C.S., § 4812; I.C.A., § 60-404.

RESEARCH REFERENCES

Am. Jur. — 13 Am. Jur. 2d, Carriers, § 193
et seq.

62-405. Printed rules and regulations. — Every railroad corporation must have printed and conspicuously posted on the inside of its passenger cars its rules and regulations regarding fare and conduct of its passengers; and in case any passenger is injured on or from the platform of a car, or on any baggage, wood, gravel or freight car, in violation of such printed regulations, or in violation of positive verbal instructions or injunctions given to such passenger in person by any officer of the train, the corporation is not responsible for damages for such injuries, unless the corporation failed to comply with the provisions of the preceding section.

History.

R.S., § 2678; reen. R.C. & C.L., § 2813;
C.S., § 4813; I.C.A., § 60-405.

RESEARCH REFERENCES

Am. Jur. — 14 Am. Jur. 2d, Carriers,
§ 768.

62-406. Erection and maintenance of fences — Liability for damages. — Every railroad company or corporation operating any steam or electric railroad in this state shall erect and maintain lawful fences, not less than four feet (4') high, on each side of its road, where the same passes through or along inclosed or adjoining cultivated fields or inclosed lands, with proper and necessary openings and gates therein and farm crossings; and also construct and maintain cattle guards suitable and sufficient to prevent horses, cattle, mules or other animals from getting on such railroads, at all highway crossings where such railroad is fenced up to such highway crossing: provided, however, that in lieu of the necessary openings and gates therein at farm crossings, cattle guards suitable and sufficient to prevent horses, cattle, mules or other animals from getting on such railroads may be installed at the expense of the adjoining landowner or landowners.

Until such fences, openings, gates, farm crossings and cattle guards shall be duly and properly made, installed and maintained, such railroad company or corporation shall be liable in a civil action to any and all person or persons who may sustain any loss, injury or damage by the wounding, maiming or killing of any horse, mare, gelding, filly, jack, jenny or mule, or any cow, heifer, bull, ox, steer or calf, or any other domestic animal which shall be done by such railroad company or corporation, or its agents or servants, in the operation and management of engines, cars, or other rolling stock, upon or over such railroad, whether such person or persons operating or in charge of such engine, cars or other rolling stock were guilty of negligence or not; and such railroad company or corporation shall also be liable in a civil action to any and all persons who may sustain any loss, injury or damage by the wounding, maiming or killing of any horse, mare, gelding, filly, jack, jenny or mule, or any cow, heifer, bull, ox, steer or calf, or any other domestic animal which shall be done by such railroad company or corporation, or its agents or servants in the operation or management of engines, cars, or other rolling stock upon or over such railroad, if any such animal or animals escape from adjoining lands and come upon the right of way or railroad tracks of such railroad company or corporation, occasioned by the failure of such railroad company or corporation to construct and maintain such fences, gates, farm crossings or cattle guards, whether the person or persons operating or in charge of such engine, cars or other rolling stock were guilty of negligence or not; but after such fences, gates, farm crossings and cattle guards shall have been duly made, installed and maintained, such railroad company or corporation shall not be liable for any such damages, unless negligently or wilfully done, and in all actions for the recovery of damages under this section, proof of the wounding, maiming or

killing of such animal or animals by such railroad company or corporation, shall be prima facie evidence of negligence or wilfulness on the part of such railroad company or corporation.

If any railroad company or corporation, aforesaid, fail, neglect or refuse for and during a period of three (3) months after the completion of its road through or along the fields or enclosures hereinbefore mentioned, to erect, install and maintain any fences, openings, gates, farm crossings, or cattle guards as herein required, after having received not less than thirty (30) days' notice requiring them to erect, install and maintain such fences, openings, gates, farm crossings or cattle guards, then the owner of such field or enclosure may erect and maintain such fences, openings, gates, farm crossings and cattle guards, and shall thereupon have a right to recover from such railroad or corporation, the full value of the work so done, by a civil action in any court of competent jurisdiction.

History.

R.S., § 2679; reen. R.C., § 2814; 1907, p. 324, § 1; reen. R.C., § 2815; am. 1911, ch.

223, § 1, p. 706; reen. C.L., § 2815; C.S., § 4814; I.C.A., § 60-406; am. 1945, ch. 144, § 1, p. 216.

STATUTORY NOTES

Cross References.

Authority of public utility commission to require railroads to fence along each side of track, § 62-1201 et seq.

Barbed wire, careless exposure unlawful,

notice to owner, civil and criminal liability, § 35-301 et seq.

Claims for damages, § 62-408.

Lawful fences, §§ 35-101, 35-102.

JUDICIAL DECISIONS

ANALYSIS

Highway crossings.

In general.

Inclosed lands.

Instruction to jury.

Liability of railroad.

Maintenance of cattle guards.

Maintenance of gates.

Penalties.

Pleading.

Rural districts.

Station grounds.

Highway Crossings.

This section applies only to stock killed on the company's line where it is required to fence it, and not at highway crossings. *Yates v. Camas Prairie R.R.*, 22 Idaho 802, 128 P. 545 (1912).

In General.

This section is a general police regulation, designed not merely for the benefit of the adjoining owners, but for the protection of property in domestic animals generally and for safety of passengers who would be exposed to peril by collision with cattle coming upon the track; thus, the company is under general obligation to the public and not limited obli-

gation to adjoining landowners. *Johnson v. Oregon S. L. R.R.*, 7 Idaho 355, 63 P. 112 (1900).

Inclosed Lands.

Statutory test of "inclosed" lands does not require a fence or wall, but presumptively may be met by something else which works as a barrier to turn cattle. *Darrar v. Chicago, M., St. P. & Pac. R.R.*, 94 Idaho 772, 497 P.2d 1399 (1972).

Evidence that a railroad passed along the south side of a pasture which was enclosed by fences on the west and east ends, except for a point where a road cut through, and on the north side by a mountainous terrain with

timber growth through which cattle did not roam was sufficient to support a finding that the railroad passed along an enclosed pasture within the meaning of the statute. *Darrar v. Chicago, M., St. P. & Pac. R.R.*, 94 Idaho 772, 497 P.2d 1399 (1972).

Instruction to Jury.

The instruction to the jury "If you find at the date of the killing of the said colt, as alleged by the plaintiff, that the railroad of the said defendant was not securely fenced and such fence was not properly maintained by the defendant at the point the said colt entered upon said road, then you should find for the plaintiff and assess his damages at the value of the colt so killed" is a proper instruction. *Wallace v. Oregon Short Line R.R.*, 16 Idaho 103, 100 P. 904 (1909).

Liability of Railroad.

Railroad was held liable for stallion that escaped from its owner without his fault and was killed by a railroad at a point where railroad was required by law to fence, but had not done so. *Patrie v. Oregon Short Line R.R.*, 6 Idaho 448, 56 P. 82 (1899).

Until railroad has complied with this section, it is liable, regardless of any negligence on the part of its servants, for all damages incurred by the destruction of livestock. *Bernardi v. Northern Pac. Ry.*, 18 Idaho 76, 108 P. 542 (1910).

While railroad is held to strict compliance with requirements as to fences at designated points, it is only fair to require claimant to show that lands which he claims are required to be fenced are in such condition and so situated as to make railroad company liable. *Montgomery v. Chicago, M. & St. Paul Ry.*, 37 Idaho 657, 217 P. 601 (1923).

Evidence that the railroad's right of way fence was in such poorly maintained condition that cattle were not turned, and that the fence was down at the times cattle were killed was sufficient for the district court to have found the railroad liable under this section. *Darrar v. Chicago, M., St. P. & Pac. R.R.*, 94 Idaho 772, 497 P.2d 1399 (1972).

The fact that the railroad did not keep record book as required by § 62-410 and the liability of railroad for killing animals was established under this section, warranted the award of double damages. *Darrar v. Chicago, M., St. P. & Pac. R.R.*, 94 Idaho 772, 497 P.2d 1399 (1972).

Maintenance of Cattle Guards.

It is the duty of railroad company to maintain cattle guard at highway crossing where it has fenced its right of way up to the highway, whether it has done so voluntarily or because required to fence by the statute. *Strong v. Oregon Short Line R.R.*, 31 Idaho 48, 169 P. 179 (1917).

Railroad company was liable in damages for loss of plaintiff's horse and colt where the evidence showed that the only barrier maintained by the railroad at the spot where animals were killed was a 15 foot fill with a slope of 45 degrees, and that horses and other animals frequently clambered up the fill and on to the right of way. *Zenier v. Spokane Int'l R.R.*, 78 Idaho 196, 300 P.2d 494 (1956).

Maintenance of Gates.

This section requires every railroad company to erect and maintain fences, with gates at private crossings, at places where it is required to fence, which gates so maintained shall be kept closed by the railroad company, as far as third parties and the public are concerned. *Saccamonno v. Great N. Ry.*, 30 Idaho 513, 166 P. 267 (1917); *Mole v. Mellon*, 46 Idaho 450, 268 P. 1048 (1928).

Third person has no right to have gate at private crossing maintained as gate or use it as such. *Mole v. Mellon*, 46 Idaho 450, 268 P. 1048 (1928).

Penalties.

In order to enforce duty to fence, the legislature may prescribe appropriate penalties and mode in which they shall be enforced, whether at suit of private party or at the suit of public, and what disposition shall be made of the amounts collected, are mere matters of legislative discretion. *Hindman v. Oregon Short Line R.R.*, 32 Idaho 133, 178 P. 837 (1918).

Pleading.

Allegation that accident occurred at place where railroad was under duty to fence was held insufficient; complaint must state ultimate facts showing duty of railroad to fence. *Mole v. Payne*, 39 Idaho 247, 227 P. 23 (1924).

Rural Districts.

"Inclosed or cultivated fields or inclosed lands" as used in this section refer to rural or country districts and does not refer to municipality or town, whether incorporated or not, unless its limits are so extended as to include fields. *Bernardi v. Northern Pac. Ry.*, 18 Idaho 76, 108 P. 542 (1910).

Station Grounds.

Railroad company's station grounds are exempt from requirements of this section. *Ferrell v. Oregon Short Line R.R.*, 44 Idaho 217, 256 P. 104 (1927).

Question of reasonable necessity of switch as part of station grounds is question of fact. *Ferrell v. Oregon Short Line R.R.*, 44 Idaho 217, 256 P. 104 (1927).

Cited in: *Monical v. Northern Pac. Ry.*, 19 Idaho 150, 112 P. 764 (1910); *Brown v. Oregon Short Line R.R.*, 20 Idaho 364, 118 P. 768 (1911); *Bliss v. Oregon Short Line R.R.*, 34

Idaho 351, 200 P. 721 (1921); Packard v. (1934); Hubbard v. Howard, 758 F. Supp. 594
O'Neil, 45 Idaho 427, 262 P. 881 (1927); Wil- (D. Idaho 1990), aff'd, 927 F.2d 609 (9th Cir.
son v. Fackrell, 54 Idaho 515, 34 P.2d 409 1991).

DECISIONS UNDER PRIOR LAW

Constitutionality.

Former version of this section was uncon-
stitutional because it made the railroad liable
for killing an animal without any proof of

negligence or of violation of statutory duty.
Catril v. Union Pac. R.R., 2 Idaho (Hasb.) 576,
21 P. 416 (1889); Jones v. Oregon Short Line
R.R., 6 Idaho 441, 56 P. 76 (1899).

RESEARCH REFERENCES

Am. Jur. — 65 Am. Jur. 2d, Railroads,
§§ 80 to 88.

62-407. Crossings and cattle guards. — It shall be the duty of every
railroad company whose line runs through or across any desert or other
unoccupied territory, to keep and maintain suitable crossings and cattle
guards, wherever any public highway or publicly traveled road crosses the
same, and to place gates at convenient intervals not exceeding four (4) miles
apart, for the crossing of the same wherever there are no roads within such
distances.

History.

1907, p. 324, § 2; reen. R.C. & C.L., § 2816;
C.S., § 4815; I.C.A., § 60-407.

JUDICIAL DECISIONS

ANALYSIS

Application.

Pleading.

Application.

It was intended that this section should
apply to great stretches of country traversed
by railroads, but not cultivated or inclosed
and not to such lands as are included in
§ 62-406. Brown v. Oregon Short Line R.R.,
20 Idaho 364, 118 P. 768 (1911).

It was not intended by this section to re-
quire a railroad company to erect gates in
places where its track is not fenced nor re-
quired to be fenced. Brown v. Oregon Short
Line R.R., 20 Idaho 364, 118 P. 768 (1911).

This section makes it duty of railroad to
maintain cattle guards only where road
crosses public highway or publicly traveled
road. Bliss v. Oregon Short Line R.R., 34
Idaho 351, 200 P. 721 (1921).

Pleading.

In addition to showing that railroad did not
maintain cattle guards, it is also necessary to
show that because of such failure cattle got on
track. Bliss v. Oregon Short Line R.R., 34
Idaho 351, 200 P. 721 (1921).

RESEARCH REFERENCES

Am. Jur. — 65 Am. Jur. 2d, Railroads,
§§ 80 to 88.

C.J.S. — 74 C.J.S., Railroads, §§ 392 to
398, 927, 928.

62-408. Claim for damages. — Any person claiming damages under
section 62-406[Idaho Code,] must serve notice of his claim in writing signed
by such person, or some one in his behalf, upon any station agent, ticket
agent, or other agent of such railroad company or corporation, within six (6)

months after the alleged damage is done, and all suits for such damage must be commenced within one (1) year after the service of such notice.

History.

1907, p. 324, § 3; reen. R.C., § 2817; am.

1911, ch. 223, § 2, p. 707; reen. C.L., § 2817; C.S., § 4816; I.C.A., § 60-408.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion was added by the

compiler to conform to the statutory citation style.

JUDICIAL DECISIONS

Purpose of Notice.

Purpose of notice required by this section is to prevent stale claims being filed against company, and to afford latter an opportunity to make an investigation: liability of the company being limited to value of animal or animals killed or wounded, if company's right of way fence has been erected and maintained

as required by law. *Hindman v. Oregon Short Line R.R.*, 32 Idaho 133, 178 P. 837 (1918).

Cited in: *Wallace v. Oregon Short Line R.R.*, 16 Idaho 103, 100 P. 904 (1909); *Strong v. Oregon Short Line R.R.*, 31 Idaho 48, 169 P. 179 (1917).

62-409. Recovery of attorneys' fees. — In all suits under section 62-406[, Idaho Code,] if the plaintiff recover any damages he shall also be entitled to recover reasonable attorneys' fees, together with his costs of suit.

History.

1907, p. 324, § 4; reen. R.C., § 2818; am.

1911, ch. 223, § 3, p. 708; reen. C.L., § 2818; C.S., § 4817; I.C.A., § 60-409.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion was added by the

compiler to conform to the statutory citation style.

JUDICIAL DECISIONS

ANALYSIS

Appeals.

Constitutionality.

Appeals.

This section authorizes the award of attorneys' fees to a plaintiff on appeal in a suit under § 62-406 upon his successful defense of the judgment on appeal by defendant. *Darrar v. Chicago, M., St. P. & Pac. R.R.*, 94 Idaho 772, 497 P.2d 1399 (1972).

of the laws, and is not repugnant to the 14th Amendment to the U.S. Constitution. It is a proper police regulation, designed to compel railroad companies to comply with law requiring them to maintain fences along their rights of way for the public safety and to provide a penalty for violation thereof. *Hindman v. Oregon Short Line R.R.*, 32 Idaho 133, 178 P. 837 (1918).

Constitutionality.

This section does not deprive railroad companies of their property without due process of law nor deny to them the equal protection

Cited in: *Yates v. Camas Prairie R.R.*, 22 Idaho 802, 128 P. 545 (1912).

62-410. Book of descriptions of stock killed. — Every railroad company must keep a book at a principal station in each county into or through which its road runs, to be designated by the company, and a notice of the station so designated must be filed with the recorder of the county in

which the station is located; and every such company must cause to be entered in said book, within fifteen (15) days after the killing or maiming of any animal, a description as nearly as may be of such animal, its color, age, marks and brands, and keep said book subject to public inspection. Should any company fail to keep such book, or to file such notice in the manner herein provided, or to enter therein such description of any animal maimed or killed, for a period of fifteen (15) days thereafter, such company is liable to the owner of such animal for twice the value thereof.

History.

R.S., § 2681; reen. R.C. & C.L., § 2819;
C.S., § 4818; I.C.A., § 60-410.

JUDICIAL DECISIONS

ANALYSIS

Double damages.

Negligence must be shown.

Purpose of section.

Valuation of animal.

Double Damages.

The imposition of double damages for the killing of an animal is mandatory where the railroad is liable for the killing of the animal and the record book required by this section is not kept by the railroad. *Darrar v. Chicago, M., St. P. & Pac. R.R.*, 94 Idaho 772, 497 P.2d 1399 (1972).

Negligence Must Be Shown.

Railroad company was held not liable for injury to animals where there was an entire absence of proof of negligence on part of railroad company. *Jones v. Oregon Short Line R.R.*, 6 Idaho 441, 56 P. 76 (1899).

Killing of animals and failure to keep book herein required do not alone render company liable. Plaintiff must, in addition, allege and

prove negligence on company's part. *Wilson v. Oregon Short Line R.R.*, 28 Idaho 54, 152 P. 1062 (1915); *Bliss v. Oregon Short Line R.R.*, 34 Idaho 351, 200 P. 721 (1921).

Purpose of Section.

Duty imposed upon railroad company under this section is the keeping of a book, evident purpose of which is to give notice, but this is not necessary where the owner has actual notice. *Wilson v. Oregon Short Line R.R.*, 28 Idaho 54, 152 P. 1062 (1915).

Valuation of Animal.

A railroad employee's report in which he estimated the weight of a calf killed by the railroad was a proper basis for placing a value on the animal. *Darrar v. Chicago, M., St. P. & Pac. R.R.*, 94 Idaho 772, 497 P.2d 1399 (1972).

62-411. Disposal of carcass. — In case of maiming or killing any cattle, sheep or hog, the body of the animal belongs to the company, unless the owner elects, within twelve (12) hours, to take the same in satisfaction or reduction of damages. The company may proceed to take care of and preserve the body of such animal, and must unless taken by the owner, take off enough of the hide to show distinctly any brands on such animal, also both ears, including the hide between the ears, and in such way as to keep the ears together, and the pieces of hide so taken off, and the ears of each animal, must be attached together and preserved for at least three (3) months for inspection at the station house nearest to the place where such killing or maiming occurred. For every failure so to keep any such pieces of hide and ears for inspection, the company, in addition to the damages to the owner, forfeits \$100, to be recovered in an action in the name of the state, in any court of competent jurisdiction, one-half to be paid into the school fund of the county, and the residue to the informer.

History.

R.S., § 2682 (see 1888-1889, p. 45); reen.

R.C. & C.L., § 2820; C.S., § 4819; I.C.A., § 60-411.

STATUTORY NOTES**Compiler's Notes.**

The disposition of the forfeiture provided in this section was superseded by the enactment

of § 19-4705 by S.L. 1969, ch. 136, effective January 11, 1971.

62-412. Bell or whistle. — The operator of a train or locomotive is not required to sound the locomotive's bell, horn or whistle when approaching any location at which the railroad crosses a private highway, private road or private street at grade.

History.

R.S., § 2683; reen. R.C. & C.L., § 2821; C.S., § 4820; am. 1929, ch. 50, § 1, p. 69;

I.C.A., § 60-412; am. 1974, ch. 156, § 1, p. 1387; am. 2007, ch. 255, § 1, p. 760.

STATUTORY NOTES**Amendments.**

The 2007 amendment, by ch. 255, deleted "to be sounded" from the end of the section heading and rewrote the section which formerly read: "A bell of at least twenty (20) pounds weight must be placed on each locomotive engine, and be rung at a distance of at least eighty (80) rods from the place where the railroad crosses any public street, road or highway, and be kept ringing until it has crossed such public street, road or highway; or an adequate steam, air, electric or other similar whistle must be attached, and be

sounded, except in cities, at the like distance, and be kept sounding at intervals until it has crossed the same, under a penalty of one hundred dollars (\$100) for every neglect, to be paid by the corporation operating the railroad, which may be recovered in an action prosecuted by the prosecuting attorney of the proper county, for the use of the state. The corporation is also liable for all damages sustained by any person, and caused by its locomotives, trains or cars, when the provisions of this section are not complied with."

JUDICIAL DECISIONS**DECISIONS UNDER PRIOR LAW****ANALYSIS**

Common-law duty.

Conflicting evidence, jury question.

Contributory negligence.

Duty to look and listen.

Instructions to jury.

Joint tortfeasors.

Negligence per se.

Prima facie case.

Private roads.

Removal of causes.

Sounding intervals.

Common-Law Duty.

It is the common duty of the engineer on seeing an automobile some 300 feet from the crossing to give the statutory signals of the train's approach, and the rule is not different whether the crossing is a private or public one, and it is negligence on the part of the engineer, chargeable to the railroad company,

for the engineer not to do so. *Judd v. Oregon S. L. R.R.*, 55 Idaho 461, 44 P.2d 291 (1935).

Conflicting Evidence, Jury Question.

Unless the complaint or the proof is reasonably susceptible of no other interpretation than that the plaintiff was guilty of contributory negligence, the question of contributory

negligence is for the jury and is never one of law for the court. *Department of Fin. v. Union Pac. R.R.*, 61 Idaho 484, 104 P.2d 1110 (1940).

The testimony of witnesses to the effect that they were in position to hear the signals and did not hear them, opposed to that of witnesses who testified they heard them, presents a conflict in the evidence, and a question for the jury. *Hobbs v. Union Pac. R.R.*, 62 Idaho 58, 108 P.2d 841 (1940).

Contributory Negligence.

Failure to look and listen before a crossing a street-car track at a public street crossing is not, as a matter of law, negligence per se. *Pilmer v. Boise Traction Co.*, 14 Idaho 327, 94 P. 432 (1908).

Railroad company is liable for damages where provisions of this section are not complied with, unless person injured is guilty of contributory negligence. *Wheeler v. Oregon R.R. & Nav. Co.*, 16 Idaho 375, 102 P. 347 (1909); *Graves v. Northern Pac. Ry.*, 30 Idaho 542, 166 P. 571 (1917).

While a violation of this statute by the railroad is negligence per se and renders the railroad liable for damages for injuries caused by failure to comply therewith, it does not abrogate the doctrine of contributory negligence or give a right of action where negligence of the plaintiff contributed to and was the proximate cause of the injury. *Allan v. Oregon Short Line R.R.*, 60 Idaho 267, 90 P.2d 707 (1938); *Ralph v. Union Pac. R.R.*, 82 Idaho 240, 351 P.2d 464 (1960).

Duty to Look and Listen.

If duty imposed upon company by this section is observed, the company has a right to assume that persons on the highway will look and listen. *Burrow v. Idaho & W.N.R.R.*, 24 Idaho 652, 135 P. 838 (1913).

There is no arbitrary rule as to when or where the traveler must stop, look and listen. *Graves v. Northern Pac. Ry.*, 30 Idaho 542, 166 P. 571 (1917).

Traveler on highway approaching railroad crossing must make reasonable use of his senses, and his failure to do so is not exhausted by negligence of railroad company in omitting its statutory duty to give warning of approach of train. *Smith v. Oregon Short Line R.R.*, 47 Idaho 604, 277 P. 570 (1929).

Instructions to Jury.

In action against railroad and several members of train crew for injury at crossing, instruction in words of statute without specifying that it was duty of members of crew to sound bell or whistle is erroneous. *Jakeman v. Oregon Short Line R.R.*, 43 Idaho 505, 256 P. 88 (1927).

Where there is no sufficient evidence to overcome prima facie case made, judgment will not be reversed for failure to instruct that

failure to give signals must have been proximate cause for injury. *Kerby v. Oregon Short Line R.R.*, 45 Idaho 636, 264 P. 377 (1928).

Joint Tortfeasors.

The railroad company and the engineer are jointly liable under this section. *Judd v. Oregon Short Line R.R.*, 4 F. Supp. 657 (D. Idaho 1933).

Negligence Per Se.

Where the sounding of a whistle or bell would have served to alert a driver at a nearby stop sign when visual observation was impaired, the failure of the approaching train to give such warning was adequate basis for a finding of negligence. *Union Pac. R.R. v. Jarrett*, 381 F.2d 597 (9th Cir. 1967).

This section does not rest liability for damages upon contingency that injury sustained was result of failure to ring the bell or blow the whistle, but declares absolutely that where bell is not rung or whistle blown and damages were sustained the company is liable. *Wheeler v. Oregon R.R. & Nav.*, 16 Idaho 375, 102 P. 347 (1909).

Failure of railway company to ring bell or sound whistle constitutes negligence per se, negligence in law. *Judd v. Oregon Short Line R.R.*, 4 F. Supp. 657 (D. Idaho 1933); *Wheeler v. Oregon R.R. & Nav.*, 16 Idaho 375, 102 P. 347 (1909); *Graves v. Northern Pac. Ry.*, 30 Idaho 542, 166 P. 571 (1917); *Smith v. Oregon Short Line R.R.*, 32 Idaho 695, 187 P. 539 (1920); *Allan v. Oregon Short Line R.R.*, 60 Idaho 267, 90 P.2d 707 (1938); *Department of Fin. v. Union Pac. R.R.*, 61 Idaho 484, 104 P.2d 1110 (1940); *Hobbs v. Union Pac. R.R.*, 62 Idaho 58, 108 P.2d 841 (1940).

Failure to blow whistle when 80 rods (1320 feet) from crossing as required by this section did not constitute negligence, if whistle was sounded three times while 950 feet from crossing in time to have prevented accident, if driver of truck had heeded whistle warnings. *Ineas v. Union Pac. R.R.*, 72 Idaho 390, 241 P.2d 1178 (1952).

The failure of the operators of a train to give the statutory signal is negligence per se. *Yearout v. Chicago, M., St. P. & Pac. R.R.*, 82 Idaho 466, 354 P.2d 759 (1960).

Prima Facie Case.

Where it is shown that injury was inflicted by railroad train at place it is required to signal, and that it has failed to do so, injured party has made out prima facie case that he is entitled to have submitted to the jury. *Wheeler v. Oregon R.R. & Nav.*, 16 Idaho 375, 102 P. 347 (1909); *Kerby v. Oregon Short Line R.R.*, 45 Idaho 636, 264 P. 377 (1928); *Department of Fin. v. Union Pac. R.R.*, 61 Idaho 484, 104 P.2d 1110 (1940).

Private Roads.

The word "road" includes private roads, as well as public roads, streets and highways.

Von Lindern v. Union Pac. R.R., 94 Idaho 777, 498 P.2d 345 (1972).

Removal of Causes.

A complaint, in which a foreign railroad company and a resident engineer were joined as parties defendant, which charged a failure to comply with this section and that a collision resulted from such noncompliance in which a passenger in an automobile was killed and the driver injured stated a nonremovable joint cause of action. Judd v. Oregon Short Line R.R., 4 F. Supp. 657 (D. Idaho 1933).

Sounding Intervals.

In negligence action resulting from collision between train and automobile, there was no violation of this section because train's signal horn was blown 50% or less of the time from the first sounding. The statute only requires that the horn be sounded at intervals, and in this case the train crew activated the bell on the lead locomotive as well as sounding the horn. Hayes v. Union Pac. R.R. Co., 143 Idaho 204, 141 P.3d 1073 (2006).

Cited in: Packard v. O'Neil, 45 Idaho 427, 262 P. 881 (1927).

RESEARCH REFERENCES

Am. Jur. — 65 Am. Jur. 2d, Railroads, § 200 et seq.
C.J.S. — 74 C.J.S., Railroads, §§ 816 to 818.

A.L.R. — Traffic signal, sign or warning, liability for accident as affected by reliance upon or disregard of. 2 A.L.R.3d 12, 155, 275; 3 A.L.R.3d 180, 507.

62-413. Ejection of passengers for misconduct — Penalty for employee's violations. — If any passenger on any railroad train refuses to pay his fare, or to exhibit or surrender his ticket, when reasonably requested so to do, or uses abusive, vulgar, obscene or profane language in a car occupied by other passengers, or makes his presence offensive or unsafe to the said passengers, or if any trespasser be found on any car or train, the conductor and employees of the railway company may put him and his baggage out of the cars or off the train, using no unnecessary force, at any station of the railway company operating such train, which is open at the time of such ejection, on stopping the train, but not otherwise.

Any conductor or employee of any railway company violating the provisions of this section shall be guilty of a misdemeanor, and the railway company shall be liable for all damages caused thereby.

History. ch. 188, § 1, p. 620; reen. C.L., § 2822; C.S., R.S., § 2684; reen. R.C., § 2822; am. 1911, § 4821; I.C.A., § 60-413.

JUDICIAL DECISIONS

Cited in: Palcher v. Oregon Short Line R.R., 31 Idaho 93, 169 P. 298 (1917).

RESEARCH REFERENCES

Am. Jur. — 14 Am. Jur. 2d, Carriers, § 1037 et seq.

62-414. Report of delayed trains. [Repealed.]

Repealed by S.L. 2012, ch. 78, § 3, effective July 1, 2012.

History. 1907, p. 347, § 1; reen. R.C. & C.L., § 2823; C.S., § 4822; I.C.A., § 60-414.

62-415. Report of delayed trains — Notice at stations. [Repealed.]

Repealed by S.L. 2012, ch. 78, § 3, effective July 1, 2012.

History.

1907, p. 347, § 2; reen. R.C., § 2824; C.S., § 4823; I.C.A., § 60-415.

62-416. Report of delayed trains — Failure to give notice a misdemeanor — Penalty. [Repealed.]

Repealed by S.L. 2012, ch. 78, § 3, effective July 1, 2012.

History.

1907, p. 347, § 3; reen. R.C. & C.L., § 2825; C.S., § 4824; I.C.A., § 60-416.

62-417. Report of delayed trains — Punishment of corporation. [Repealed.]

Repealed by S.L. 2012, ch. 78, § 3, effective July 1, 2012.

History.

1907, p. 347, § 4; reen. R.C., § 2826; C.S., § 4825; I.C.A., § 60-417.

62-418. Railroads and other carriers — Employee inspecting shipments to give shipper copy of report. — Every inspector, agent or employee of any steam or electric railroad or other public carrier who inspects any car or consignment of fruit, grain, livestock, or other agricultural or farm product, originating in the state of Idaho prior to shipment, to ascertain the condition thereof, shall at the time of such inspection on demand of shipper or consignor deliver to the shipper or consignor a true copy or copies, duly signed by him, of any and all reports or certificates by him made or rendered to such public carrier, as to the condition of the contents of such car or consignment.

History.

1923, ch. 132, § 1, p. 193; I.C.A., § 60-418.

62-419. Penalty for failure to give report or making false report. — Every inspector, agent or employee of any such public carrier who, upon making such an inspection, shall on demand of shipper or consignor fail to deliver to the shipper or consignor at such time a true copy of each and every report or certificate by him made concerning the condition of the car or consignment about to be shipped, and every such inspecting agent who shall wilfully make or cause to be made or published in any such report or certificate any false statement as to the condition of the livestock or commodity by him so inspected, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not exceeding \$300 for each offense.

History.

1923, ch. 132, § 2, p. 193; I.C.A., § 60-419.

62-420. "Track motor cars" defined. — As used in this act, the term "track motor cars," means all power propelled speeders and motor cars which can be lifted on and off the track by hand.

History.

1953, ch. 89, § 1, p. 119.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1953, ch. 89, which is compiled as §§ 62-420 to 62-423.

RESEARCH REFERENCES

C.J.S. — 74 C.J.S., Railroads, § 807.

62-421. Equipment of track motor cars with specified electric lights. — Every individual, firm or corporation, operating or controlling any railroad which is a common carrier shall equip each of its track motor cars operated during the period thirty (30) minutes before sunset to thirty (30) minutes after sunrise with:

(1) An electric headlight of sufficient candle power to enable the operator of the car to plainly discern any track obstruction, landmark, warning sign or grade crossing at a distance not less than 300 feet.

(2) A red rear electric light of sufficient candle power to be plainly visible at a distance not less than 300 feet.

History.

1953, ch. 89, § 2, p. 119.

62-422. Equipment of track motor cars. — Every individual, firm or corporation, operating or controlling any railroad which is a common carrier shall equip each of its track motor cars with:

(1) A windshield, with a transparent section, or sections, of sufficient height and width to reasonably protect the occupants of the car, and equipped with a device, which must be kept in good working order, with which the operator can clean rain, snow and other moisture from the windshield.

(2) A canopy or top adequate to protect the occupants of the car from sun, rain, snow or other inclement weather.

(3) A first aid kit to be maintained with sufficient supplies to render ordinary first aid to the usual number of occupants of the car.

History.

1953, ch. 89, § 3, p. 119.

62-423. Violations as to equipment penalized. — Violation of any of

the provisions of sections 62-421 and 62-422[, Idaho Code,] is punishable, upon conviction, by a fine of not more than \$100 for each offense.

History.

1953, ch. 89, § 4, p. 119.

STATUTORY NOTES**Cross References.**

Disposition of fines, § 19-4705.

Compiler's Notes.

The bracketed insertion was added by the compiler to conform to the statutory citation style.

Effective Dates.

Section 5 of S.L. 1953, ch. 89 provided the act should take effect on and after July 1, 1954.

62-424. Hearing on abandonment. — (1) Whenever any railroad proposes to abandon any branch line or main line now in operation within the state of Idaho, the railroad shall file notice of the intended abandonment with the public utilities commission. The public utilities commission shall schedule a public hearing on the proposed abandonment. If the hearing results in a finding by the commission that the abandonment of the branch line or main line would adversely affect the area then being served and that there is reason to believe that the closure would impair the access of Idaho communities to vital goods and services and market access to those communities and that the line has potential for profitability, then the public utilities commission shall transmit a report of its findings to the United States surface transportation board on behalf of the people of the state of Idaho.

(2) The Idaho public utilities commission shall continue to intervene in federal surface transportation board abandonment proceedings when necessary to protect the state's interest.

History.

I.C., § 62-424, as added by 1985, ch. 82,

§ 1, p. 157; am. 1997, ch. 371, § 1, p. 1184; am. 2001, ch. 348, § 3, p. 1224.

STATUTORY NOTES**Federal References.**

The surface transportation board is part of the United States department of transportation. See 49 U.S.C.S. § 701 et seq.

Effective Dates.

Section 2 of S.L. 1985, ch. 82 declared an emergency. Approved March 12, 1985.

CHAPTER 5**CONDITIONAL SALES AND LEASES OF RAILROAD EQUIPMENT****SECTION.**

62-501 — 62-503. [Repealed.]

62-501 — 62-503. Lien of vender and lessor — Record of contract — Prior contracts not affected. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1905, p. 154, §§ 1 to 3; reen. R.C. & C.L., §§ 4826 to

4828; I.C.A., §§ 60-501 to 60-503; 1941, ch. 34, § 1, p. 81, were repealed by S.L. 1991, ch. 30, § 14.

CHAPTER 6

TELECOMMUNICATIONS ACT OF 1988

SECTION.

- 62-601. Short title.
- 62-602. Legislative intent.
- 62-603. Definitions.
- 62-604. Applicability of chapter.
- 62-605. Procedure for notice of election — Commission continuing authority.
- 62-606. Requirement for price list or tariff filing — Withdrawal of tariffs or price lists.
- 62-607. Averaging of message telecommunication service rates.
- 62-607A. Prohibited activities by a telephone corporation.
- 62-608. Commission authority to require interconnection for the purpose of providing message telecommunication services.
- 62-608A. InterLATA service restrictions.
- 62-609. Imputed and nondiscriminatory access charges — Commission authority.
- 62-610. Universal service fund.
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- 62-623. Subsidy reform — Universal service — Report to legislature.
- 62-624. Proceedings prior to enactment ratified.
- 62-625 — 62-654. [Repealed.]

62-601. Short title. — This chapter shall be known and may be referred to as the "Telecommunications Act of 1988."

History.

I.C., § 62-601, as added by 1988, ch. 195, § 1, p. 358.

STATUTORY NOTES

Prior Laws.

Former §§ 62-601 to 62-622 which com-

prised S.L. 1915, ch. 16, §§ 1 to 22, p. 53; reen. C.L. 254:1 to 254:22; C.S., §§ 6065 to

6086; I.C.A., §§ 60-601 to 60-622 were repealed by S.L. 1967, ch. 161, § 10-102, effective at midnight on December 31, 1967.

Compiler's Notes.

Section 4 of S.L. 1988, ch. 195 read: "On or

before January 1, 1991, the commission shall report to the legislature on the effect of this act on telecommunication services within the state of Idaho, together with the commission's recommendations for changes in the law, if any."

RESEARCH REFERENCES

Am. Jur. — 74 Am. Jur. 2d, Telecommunications, § 1 et seq.

C.J.S. — 86 C.J.S., Telecommunications, § 1 et seq.

62-602. Legislative intent. — (1) The legislature of the state of Idaho hereby finds that universally available telecommunications services are essential to the health, welfare and economic well-being of the citizens of the state of Idaho and there is a need for establishing legislation to protect and maintain high-quality universal telecommunications at just and reasonable rates for all classes of customers and to encourage innovation within the industry by a balanced program of regulation and competition.

(2) It is the intent of this legislature that effective competition throughout a local exchange calling area will involve a significant number of customers having both service provider and service option choices and that actual competition means more than the mere presence of a competitor. Instead, for there to be actual and effective competition there needs to be substantive and meaningful competition throughout the incumbent telephone corporation's local exchange calling area.

(3) It is the further intent of the legislature that the commission, in its deliberation of deregulation of the incumbent telephone corporations, will examine the impact such deregulation will have on the public interest in accordance with the general grant of authority given to the commission by the legislature and that all parties be allowed to comment thereon in such proceeding.

(4) The legislature further finds that the telecommunications industry is in a state of transition from a regulated public utility industry to a competitive industry. The legislature encourages the development of open competition in the telecommunications industry in accordance with provisions of Idaho law and consistent with the federal telecommunications act of 1996.

(5) The commission shall administer these statutes with respect to telecommunication rates and services in accordance with these policies and applicable federal law.

(6) The legislature further finds that it is consistent with the public interest, convenience and necessity that the obligation of certain rural telephone companies to comply with the requirements of section 251(c) of the telecommunications act of 1996 should be suspended upon petition of the affected telephone company, based upon the following legislative findings that the suspension is necessary:

(a) To avoid a significant economic impact on users of telecommunications services generally in areas served by the rural telephone companies;

(b) To avoid imposing requirements that are unduly economically burdensome; or

(c) To avoid imposing requirements which are technically infeasible.

History.

I.C., § 62-602, as added by 1988, ch. 195,
§ 1, p. 358; am. 1997, ch. 192, § 2, p. 539.

STATUTORY NOTES

Prior Laws.

Former § 62-602 was repealed. See Prior Laws, § 62-601.

Federal References.

The federal telecommunications act of 1996 referred to in subsection (4) of this section is compiled as 15 U.S.C.S. §§ 18, 5714; 18 U.S.C.S. §§ 1462, 1465, 2422; 47 U.S.C.S.

§§ 151, 153 to 155, 160, 161, 204, 208, 214 220 to 225, 228, 230, 251 to 261, 271 to 276, 302a, 303, 305, 307 to 310, 312, 319, 330, 332, 336, 360, 363, 382, 385, 402, 522, 531 to 534, 537, 541 to 544A, 548, 549, 552, 556, 557, 559 to 561, 571 to 573, 605, 613, 614.

Section 251(c) of the telecommunications act of 1996, referred to in subsection (6), is compiled as 47 U.S.C.S. § 251(c).

62-603. Definitions. — As used in this chapter:

(1) “Basic local exchange service” means the provision of access lines to residential and small business customers with the associated transmission of two-way interactive switched voice communication within a local exchange calling area.

(2) “Basic local exchange rate” shall mean the monthly charge imposed by a telephone corporation for basic local exchange service, but shall not include any charges resulting from action by a federal agency or taxes or surcharges imposed by a governmental body which are separately itemized and billed by a telephone corporation to its customers.

(3) “Chapter” as used herein shall mean chapter 6, title 62, Idaho Code.

(4) “Commission” means the Idaho public utilities commission.

(5) “Facilities based competitor” means a local exchange carrier that offers basic local exchange service either: (a) exclusively over its own telecommunications service facilities; or (b) predominantly over its own facilities in combination with the resale of telecommunications services of another carrier.

(6) “Incumbent telephone corporation” means a telephone corporation or its successor which was providing basic local exchange service on or before February 8, 1996.

(7) “Local exchange calling area” means a geographic area encompassing one (1) or more local communities as described in maps, tariffs, rate schedules, price lists, or other descriptive material filed with the commission by a telephone corporation, within which area basic local exchange rates rather than message telecommunication service rates apply.

(8) “Message telecommunication service (MTS)” means the transmission of two-way interactive switched voice communication between local exchange calling areas for which charges are made on a per-unit basis, not including wide area telecommunications service (WATS), or its equivalent, or individually negotiated contracts for telecommunication services.

(9) “Residential customers” shall mean persons to whom telecommunication services are furnished at a dwelling and which are used for personal or domestic purposes and not for business, professional or institutional purposes.

(10) "Rural telephone company" means a local exchange carrier operating entity to the extent that the entity:

(a) Provides common carrier service to any local exchange carrier study area that does not include either:

(i) any incorporated place of ten thousand (10,000) inhabitants or more, or any part thereof, based on the most recently available population statistics of the bureau of the census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the bureau of the census as of August 10, 1993;

(b) Provides telephone exchange service, including exchange access, to fewer than fifty thousand (50,000) access lines;

(c) Provides telephone exchange service to any local exchange carrier study area with fewer than one hundred thousand (100,000) access lines; or

(d) Has less than fifteen percent (15%) of its access lines in communities of more than fifty thousand (50,000) on the date of enactment of the federal telecommunications act of 1996.

(11) "Small business customers" shall mean a business entity, whether an individual, partnership, corporation or any other business form, to whom telecommunication services are furnished for occupational, professional or institutional purposes, and which business entity does not subscribe to more than five (5) access lines which are billed to a single billing location.

(12) "Telecommunications act of 1996" means the federal telecommunications act of 1996, public law no. 104-104 as enacted effective February 8, 1996.

(13) "Telecommunication service" means the transmission of two-way interactive switched signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means (which includes message telecommunication service and access service), which originate and terminate in this state, and are offered to or for the public, or some portion thereof, for compensation. Except as otherwise provided by statute, "telecommunication service" does not include the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service, surveying, or the provision of radio paging, mobile radio telecommunication services, answering services (including computerized or otherwise automated answering or voice message services), and such services shall not be subject to the provisions of title 61, Idaho Code, or title 62, Idaho Code.

(14) "Telephone corporation" means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, providing telecommunication services for compensation within this state, provided that municipal, cooperative, or mutual nonprofit telephone companies shall be included in this definition only for the purposes of sections 62-610 and 62-617 through 62-620, Idaho Code. Except as otherwise provided by statute, telephone corporations providing radio paging, mobile radio telecommunications services, answering services (including comput-

erized or otherwise automated answering or voice message services), or one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service or surveying are exempt from any requirement of this chapter or title 61, Idaho Code, in the provision of such services; provided, that the providers of these exempted services shall have the benefits given them under section 62-608, Idaho Code.

History.

I.C., § 62-603, as added by 1988, ch. 195,

§ 1, p. 358; am. 1997, ch. 192, § 3, p. 539; am. 1999, ch. 114, § 2, p. 341.

STATUTORY NOTES

Prior Laws.

Former § 62-603 was repealed. See Prior Laws, § 62-601.

Federal References.

The federal telecommunications act of 1996 referred to in subsection (12) of this section is compiled as 15 U.S.C.S. §§ 18, 5714; 18 U.S.C.S. §§ 1462, 1465, 2422; 47 U.S.C.S. §§ 151, 153 to 155, 160, 161, 204, 208, 214 220 to 225, 228, 230, 251 to 261, 271 to 276, 302a, 303, 305, 307 to 310, 312, 319, 330, 332, 336, 360, 363, 382, 385, 402, 522, 531 to 534, 537, 541 to 544A, 548, 549, 552, 556, 557, 559 to 561, 571 to 573, 605, 613, 614.

Compiler's Notes.

For more on the bureau of the census, see <http://www.census.gov>.

The phrase "the date of enactment of the federal communications act of 1996" refers to the date of enactment of P.L. 104-104, which was effective February 8, 1996.

The abbreviations and words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 7 of S.L. 1999, ch. 114 declared an emergency. Approved March 18, 1999.

62-604. Applicability of chapter. —

(1)(a) Any telephone corporation, except any mutual nonprofit or cooperative telephone corporation, which did not, on January 1, 1988, hold a certificate of public convenience and necessity issued by the commission and, which does not provide basic local exchange service, shall, on and after the effective date of this act, be subject to the provisions of this chapter and shall be exempt from the provisions of title 61, Idaho Code.

(b) All telephone corporations, as set forth in subsection (1)(a) of this section, shall file a notice with the commission, which notice shall set forth the following information:

(i) the name of the telephone corporation and the address of its principal place of business within the state;

(ii) a description of the telecommunication services offered by such telephone corporation and the area served by it or in which it offers telecommunication services.

(c) Such notice shall be filed on or before the 1st day of January of each year following the effective date of this act.

(2) Any telephone corporation holding a certificate of public convenience and necessity on January 1, 1988, issued by the commission pursuant to title 61, Idaho Code, may, pursuant to section 62-605, Idaho Code:

(a) elect to exclude all, or part of its telecommunication services from regulation pursuant to title 61, Idaho Code, and such excluded telecommunication services shall thereafter be subject to the provisions of this

chapter, except for the provisions of section 62-622(1) through (3), Idaho Code;

(b) notwithstanding any other provision of this chapter, a telephone corporation which, pursuant to section 61-538, Idaho Code, was, prior to the effective date of this chapter, subject to the provisions of such section, shall continue to be subject to the provisions of section 61-538, Idaho Code, notwithstanding such telephone corporation is subject to the provisions of this chapter.

History.

I.C., § 62-604, as added by 1988, ch. 195,
§ 1, p. 358; am. 2005, ch. 200, § 1, p. 605.

STATUTORY NOTES

Prior Laws.

Former § 62-604 was repealed. See Prior Laws, § 62-601.

date of this act" and "the effective date of this chapter" refer to S.L. 1998, ch. 195, which was effective July 1, 1988.

Compiler's Notes.

In this section, the phrases "the effective

62-605. Procedure for notice of election — Commission continuing authority. — (1) A telephone corporation which held a certificate of public convenience and necessity on January 1, 1988, may file with the commission a notice that such telephone corporation elects to be subject to the provisions of this chapter for all, or part of its telecommunication services, which notice shall include the following:

(a) The name and address of the telephone corporation;

(b) A narrative description of the telecommunication services provided by the telephone corporation and the geographic area and market served by the telephone corporation and a description of the telecommunication services for which the election is made.

(2) Upon the expiration of thirty (30) days from the filing of such notice of election, said telephone corporation shall, as to telecommunication services set forth in the notice of election, be exempt from the provisions of title 61, Idaho Code, and such telecommunication services shall thereafter be subject to the provisions of this chapter with the exception of the provisions of section 62-622(1) through (3), Idaho Code.

(3) Nothing contained in the provisions of this chapter or title 61, Idaho Code, shall be construed to prevent any person or entity from providing telecommunication services in competition with a telephone corporation as to those services which have been excluded from regulation under title 61, Idaho Code, pursuant to the provisions of this chapter, or with a telephone corporation, other than a mutual, nonprofit or cooperative telephone corporation, which was not, on the effective date of this act, subject to regulation by the commission pursuant to title 61, Idaho Code.

(4) Nothing contained in the provisions of this chapter shall be construed to prevent any telephone corporation from maintaining on file with the commission a tariff or price list describing the details of its services.

(5)(a) For any telecommunication service which was subject, on July 1, 1988, to title 61, Idaho Code, and which at the election of the telephone

corporation became subject to this chapter, the commission shall have continuing authority to regulate the telephone corporation to the extent necessary to implement the federal communications act of 1996, in accordance with section 62-615, Idaho Code.

(b) The commission shall have the continuing authority to determine the noneconomic regulatory requirements relating to basic local exchange service for all telephone corporations providing basic local exchange service including, but not limited to, such matters as service quality standards, provision of access to carriers providing message telecommunication service, filing of price lists, customer notice and customer relation rules, and billing practices and procedures, which requirements shall be technologically and competitively neutral.

(c) In addition, if a telephone corporation has made an election pursuant to section 62-604, Idaho Code, and this section with reference to basic local exchange service, the maximum price the telephone corporation may charge for stand-alone basic local exchange service, as defined in section 62-607A, Idaho Code, during the transition period, shall, in the first year of the transition period, be capped at a rate ten percent (10%) above the rate in effect at the time of the election. Thereafter, in each succeeding year of the transition period, the price cap shall be increased by an additional amount that is equal to the difference between the rate at the time of the election and the price cap established hereunder for the first year of the transition period. However, during the transition period, the price cap established herein shall in no event exceed the maximum basic local exchange rate that was in effect and authorized or approved by the commission for any telephone corporation regulated pursuant to title 61, Idaho Code, or section 62-622(1), Idaho Code, for residence and business basic local exchange service rates, respectively, on the date the telephone corporation made the election pursuant to section 62-604, Idaho Code, and this section with reference to basic local exchange service.

(d) The term "transition period," as used in this section, means a period of three (3) years from the effective date of the election by a telephone corporation to exclude basic local exchange services from regulation pursuant to title 61, Idaho Code, or section 62-622(1), Idaho Code. Provided however, the commission may, during the one hundred eighty (180) day period prior to the expiration of the initial three (3) year transition period, by order, extend the transition period for a period of two (2) additional years if the commission finds that such action is necessary to protect the public interest. The commission shall, if the transition period is extended, as herein provided, file a copy of the commission's order with the governor and the legislature.

(e) For the purpose of calculating the weighted statewide average rates for residence and business basic local exchange service rates to enable the commission to determine eligibility for distributions to eligible telecommunications carriers from the universal service fund established pursuant to chapter 6, title 62, Idaho Code, the residence and business basic local exchange rates in effect on July 1, 2005, shall constitute the basis for such calculation, unless the commission determines that changes in basic

local exchange rates subsequent to July 1, 2005, should be used for such calculation for the purpose of determining the eligibility of telecommunications carriers for distributions from the universal service fund.

History.

I.C., § 62-605, as added by 1988, ch. 195, § 1, p. 358; am. 2005, ch. 200, § 2, p. 605.

STATUTORY NOTES

Cross References.

Universal service fund, § 62-610.

Prior Laws.

Former § 62-605 was repealed. See Prior Laws, § 62-601.

Federal References.

The federal telecommunications act of 1996 referred to in paragraph (5)(a) of this section is compiled as 15 U.S.C.S. §§ 18, 5714; 18 U.S.C.S. §§ 1462, 1465, 2422; 47 U.S.C.S.

§§ 151, 153 to 155, 160, 161, 204, 208, 214 220 to 225, 228, 230, 251 to 261, 271 to 276, 302a, 303, 305, 307 to 310, 312, 319, 330, 332, 336, 360, 363, 382, 385, 402, 522, 531 to 534, 537, 541 to 544A, 548, 549, 552, 556, 557, 559 to 561, 571 to 573, 605, 613, 614.

Compiler's Notes.

The phrase "the effective date of this act" in subsection (3) refers to the effective date of S.L. 1998, ch. 195, which was effective July 1, 1998.

62-606. Requirement for price list or tariff filing — Withdrawal of tariffs or price lists. — (1) All telephone corporations which provide message telecommunication services, WATS service or access to their local exchange network for the provision of such services by the use of special access or private line access and switched access, or their equivalents, shall file with the commission, for information purposes, tariffs or price lists which reflect the availability, price, and terms and conditions for those services. Changes to such tariffs or price lists, except as hereinafter provided, shall be effective not less than ten (10) days after filing with the commission, and giving public notice to affected customers. Changes to tariffs or price lists that are for nonrecurring services and that are quoted directly to the customer when an order is placed, or changes that result in price reductions, shall be effective immediately upon filing with the commission and no other public notice shall be required. Notwithstanding the foregoing, telephone corporations shall not be required to file tariffs or price lists for any services provided to business customers.

(2) Upon written notice to the commission and to its business customers, and after posting the rates, terms and conditions of its services on the carrier's public website, a telephone corporation may withdraw any tariff or price list not required to be filed under the provisions of this section, provided:

- (a) The carrier continues to maintain the rates, terms and conditions of its services on the company's public website;
- (b) The commission maintains access to such terms and conditions of the telephone corporation's service; and
- (c) Nothing in this section overrides the commission's existing authority pursuant to section 62-616, Idaho Code, to resolve customer complaints.

History.

I.C., § 62-606, as added by 1988, ch. 195,

§ 1, p. 358; am. 1993, ch. 208, § 1, p. 569; am. 2011, ch. 312, § 1, p. 905.

STATUTORY NOTES

Prior Laws.

Former § 62-606 was repealed. See Prior Laws, § 62-601.

Amendments.

The 2011 amendment, by ch. 312, added

“Withdrawal of tariffs or price lists” to the section heading; designated the existing provisions as subsection (1); added the last sentence in subsection (1); and added subsection (2).

62-607. Averaging of message telecommunication service rates.

— Each provider of message telecommunication service which is subject to the provisions of the [this] chapter, shall average its rates for such service on its routes of similar distance within the state of Idaho unless otherwise authorized by the commission. Nothing contained herein shall be construed to prohibit volume discounts, or other discounts in promotional offerings.

History.

I.C., § 62-607, as added by 1988, ch. 195, § 1, p. 358.

STATUTORY NOTES

Prior Laws.

Former § 62-607 was repealed. See Prior Laws, § 62-601.

compiler to supply the probable intended term.

Compiler's Notes.

The bracketed insertion was added by the

62-607A. Prohibited activities by a telephone corporation. —

(1) No incumbent telephone corporation, or eligible telecommunications carrier as defined in section 62-610B(1), Idaho Code, shall require a residential or small business customer, as a condition of receiving basic local exchange service, to purchase or subscribe to telecommunication services other than one (1) access line for the provision of basic local exchange service.

(2) A telephone corporation that has made the election provided in sections 62-604 and 62-605, Idaho Code, with reference to basic local exchange service, shall not increase its stand-alone basic local exchange rate to residential or small business customers in any local exchange calling area to an amount that is higher than that telephone corporation's stand-alone basic local exchange rate for residential or small business customers in the local exchange calling area having the highest number of basic local exchange service residential or business customers served by the telephone corporation within the state.

(3) “Stand-alone basic local exchange rate,” as used herein, means the monthly charge made by a telephone corporation to a residential or small business basic local exchange service customer for a single line that is not included in a package of services or price discounted in a promotional offering. “Stand-alone basic local exchange rate” does not include any charges resulting from action by a federal agency or taxes or surcharge imposed by a governmental body that are separately itemized and billed by a telephone corporation to its customers.

History.

I.C., § 62-607A, as added by 2005, ch. 200,
§ 3, p. 605.

62-608. Commission authority to require interconnection for the purpose of providing message telecommunication services. — A telephone corporation providing basic local exchange service shall not be required to provide message telecommunication services. In the event a telephone corporation which provides basic local exchange service does not have interconnection with a provider of message telecommunication services, the commission may order any provider of message telecommunication service in the state to interconnect with that telephone corporation upon such terms as will be just and equitable to such provider.

History.

I.C., § 62-608, as added by 1988, ch. 195,
§ 1, p. 358.

STATUTORY NOTES**Prior Laws.**

Former § 62-608 was repealed. See Prior
Laws, § 62-601.

62-608A. InterLATA service restrictions. — (1) As used in this section:

(a) "Dialing parity" means the provision of dialing arrangements and other service characteristics by a telephone corporation subject to interLATA telecommunication service restrictions, to a telephone corporation which is not subject to interLATA telecommunication service restriction, which dialing arrangements and other service characteristics are equivalent in type and quality to those provided by the telephone corporation subject to interLATA telecommunication service restrictions in its provision of message telecommunication services to its subscribers;

(b) "InterLATA telecommunication service restrictions" means the restrictions upon interexchange telecommunication services contained in section II(D)(1) of the Modification of Final Judgment entered in the case of the United States v. Western Electric Co., 552 F. Supp. 131 (D.D.C. 1982), and section V(C)(1) of the Final Judgment entered in the case of the United States v. GTE Corporation, 1985-1 Trade Cs. (CCH) P66, 355 (D.D.C. Dec. 21, 1984).

(c) "LATA" (Local Access and Transport Area), means the geographical area within which a telephone corporation may provide message telecommunication services without violating interLATA telecommunication service restrictions.

(2) A telephone corporation providing basic local exchange service, which also provides message telecommunication services and is subject to interLATA telecommunication service restrictions, shall not be required to provide dialing parity to other telephone corporations for the provision of intraLATA message telecommunication services until such telephone corporation is also permitted to provide interstate and intrastate interLATA and

intraLATA message telecommunication services on an integrated basis, and is not subject to interLATA telecommunication service restrictions.

History.

I.C., § 62-608A, as added by 1995, ch. 60,
§ 1, p. 133.

STATUTORY NOTES**Compiler's Notes.**

The abbreviations enclosed in parentheses
so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 1995, ch. 60 declared an
emergency. Approved March 9, 1995.

62-609. Imputed and nondiscriminatory access charges — Commission authority. — (1) A telephone corporation, which provides basic local exchange service, and which also provides message telecommunications service shall impute to itself its prices of special access or private line access and switched access for the use of essential facilities used in the provision of message telecommunications service, special access or private line access services and WATS service or their equivalents. Such imputation shall be in the aggregate on a service by service basis. All other providers of message telecommunications service, special access or private line access services and WATS service or their equivalents shall impute to themselves, in the aggregate on a service by service basis, their individual cost of special or switched access or its equivalent in their pricing.

The commission shall define in an appropriate proceeding what are essential facilities for the purpose of this subsection and shall resolve any dispute which may arise under this subsection.

(2) Telecommunication services which are subject to the provisions of this chapter and which services utilize special or switched access, shall be made available by the telephone corporation for resale. No telephone corporation shall, as to its prices or charges for or the provision of such services, make or grant any preference or advantage to any telephone corporation or to a provider of services exempted from regulation under section 62-603(13), Idaho Code, or subject any telephone corporation or any provider of services exempted from regulation under section 62-603(13), Idaho Code, to any prejudice or competitive disadvantage with respect to its prices or charges for providing access to its local exchange network nor establish or maintain any unreasonable difference as to its prices or charges for access to its local exchange network.

(3) Notwithstanding the provisions of section 62-614, Idaho Code, if, after negotiation, a dispute under this section exists between or among telephone corporations or between or among telephone corporation(s) and provider(s) of services exempted from regulation under section 62-603(13), Idaho Code, such dispute shall be determined by the commission upon petition of any affected telephone corporation or provider(s) of services exempted from regulation under section 62-603(13), Idaho Code.

Information disclosed to the commission for resolution of disputes under this section shall be provided by the telephone corporations with appropriate safeguards for the protection of business or trade secrets.

History.

I.C., § 62-609, as added by 1988, ch. 195,
§ 1, p. 358; am. 1999, ch. 114, § 3, p. 341.

STATUTORY NOTES**Prior Laws.**

Former § 62-609 was repealed. See Prior Laws, § 62-601.

Effective Dates.

Section 7 of S.L. 1999, ch. 114 declared an emergency. Approved March 18, 1999.

Compiler's Notes.

The letter "s" enclosed in parentheses so appeared in the law as enacted.

62-610. Universal service fund. — (1) The commission shall establish a universal service fund (USF) for the purpose of maintaining the universal availability of local exchange service at reasonable rates and to promote the availability of message telecommunications service (MTS) at reasonably comparable prices throughout the state of Idaho.

(2) The USF shall be funded by imposing a statewide end user surcharge on local exchange service and MTS and WATS type services.

(a) The local exchange surcharge shall be a cents per line charge with a business-residential differential equal to the statewide average business-residential price ratio. Providers of local exchange service shall remit the local exchange surcharge revenues to the fund administrator on a monthly basis, unless less frequent remittances are authorized by order or rule of the commission.

(b) The MTS and WATS surcharge shall be recovered on a percentage basis through a surcharge applied to the monthly bill of each end user or by a cents per minute charge applied to the bills of all end users. Providers of MTS or WATS services shall remit the revenues derived from such surcharge to the fund administrator on a monthly basis, unless less frequent remittances are authorized by order or rule of the commission.

(c) The surcharges set forth in paragraphs (a) and (b) of this subsection shall be collected by all telephone corporations, including telephone corporations subject to the provisions of this chapter and mutual nonprofit and cooperative telephone corporations, providing the services upon which the surcharge is levied.

(3) Eligible telecommunications carriers that provide local exchange service and access service for MTS/WATS providers and that have rates for these respective services that meet both of the following criteria shall be eligible for distributions from the USF:

(a) The eligible telecommunications carrier's average residence and business local exchange service rates for one-party single line service are in excess of one hundred and twenty-five percent (125%) of the weighted statewide average rates for residence and business local exchange service rates for one-party single line service respectively, and

(b) The eligible telecommunications carrier's average per minute charge for MTS/WATS access services it provides is in excess of one hundred percent (100%) of the weighted statewide average for the same or similar MTS/WATS access services.

(4) Distributions from the fund shall be available to the individual eligible telecommunications carrier in Idaho providing basic local exchange service to meet residual revenue requirements remaining after deducting the revenue generated by all intrastate telecommunication services, from the eligible telecommunications carrier’s total intrastate telecommunication service revenue requirement as determined by the commission, including local exchange priced at one hundred twenty-five percent (125%) or more of the weighted statewide average and MTS/WATS access services priced at one hundred percent (100%) or more of the statewide average and contributions from the federal universal service fund. The commission shall provide, by order, for not less than seventy-five percent (75%) nor more than one hundred percent (100%) of the residual revenue requirement of the individual eligible telecommunications carrier to be funded by the universal service fund. The commission shall retain its authority to approve rate design consistent with this subsection, but notwithstanding such authority, the commission shall supply full funding for any commission determined revenue requirement. Distributions from the fund shall be made monthly.

- (5) The commission shall:
- (a) Adopt rules for the implementation and administration of the universal service fund established in this section;
 - (b) Determine which telephone corporations meet the eligibility standards;
 - (c) Provide for the receipt and collection of the surcharge for the universal service fund; and
 - (d) Provide for the administration and distribution of the fund to eligible telecommunications carriers in a manner determined by the commission.
- (6) “Local Exchange Service,” as used in section 62-610, Idaho Code [this section], means the provision of access lines to customers with the associated transmission of two-way interactive switched voice communication within a local exchange area.

History.
I.C., § 62-610, as added by 1988, ch. 195,

§ 1, p. 358; am. 1993, ch. 219, § 1, p. 683; am. 1998, ch. 37, § 1, p. 157.

STATUTORY NOTES

Cross References.
Funding of support for universal service after January 1, 2001, § 62-610f.

was added by the compiler to clarify the reference.
The abbreviations enclosed in parentheses so appeared in the law as enacted.

Prior Laws.
Former § 62-610 was repealed. See Prior Laws, § 62-601.

Effective Dates.
Section 12 of S.L. 1998, ch. 37 declared an emergency. Approved March 17, 1998.

Compiler’s Notes.
The bracketed insertion in subsection (6)

62-610A. Purpose. — The purpose of this act is to authorize the Idaho public utilities commission to establish a competitively and technologically neutral funding mechanism which will operate in coordination with federal universal service support mechanisms. All consumers in this state, without

regard to their location, should have comparable accessibility to basic telecommunication services at just and reasonable rates.

History.

I.C., § 62-610A, as added by 1998, ch. 37,
§ 2, p. 157.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" refers to S.L. 1998, ch. 37, which is compiled as §§ 56-901 to 56-904 and 62-610 to 62-610F.

Effective Dates.

Section 12 of S.L. 1998, ch. 37 declared an emergency. Approved March 17, 1998.

62-610B. Definitions. — For purposes of section 62-610, Idaho Code, and sections 62-610A through 62-610F, Idaho Code, the following words and phrases shall have the following meanings:

(1) "Eligible telecommunications carrier" means a telecommunications carrier designated by the commission who has the obligation to provide universal service throughout the service area for which the designation is received.

(2) "Fund" means the Idaho telecommunications universal service fund established by the commission pursuant to sections 62-610A and 62-610F, Idaho Code.

(3) "Service area" means a geographic area designated by the commission for the purpose of determining universal service obligations of eligible telecommunications carriers. In the case of a rural telephone company "service area" means the company's "study area(s)" as established by the federal communications commission and the public utilities commission.

(4) "Support area" means a geographic area designated by the commission as a high-cost area for which eligible telecommunications carrier(s) serving such area may receive financial assistance from the universal service fund. The commission shall consider population distribution, geographic factors, cost model capabilities and other relevant considerations in making such a determination.

(5) "Telecommunications carrier" means a telephone corporation providing telecommunication services for compensation within this state, and shall, for the purposes of sections 62-610A through 62-610F, Idaho Code, include municipal, cooperative or mutual telephone companies and telecommunications companies providing wireless, cellular, personal communications services and mobile radio services for compensation.

(6) "Universal service" means basic local exchange service and other telecommunication services designated by the commission as services which should be widely available to consumers in all regions of the state at just and reasonable rates.

(7) All other terms, words or phrases shall have the meaning set forth in section 62-603, Idaho Code.

History.

I.C., § 62-610B, as added by 1998, ch. 37,
§ 3, p. 157; am. 1999, ch. 114, § 4, p. 341.

STATUTORY NOTES

Compiler's Notes.

The letter "s" enclosed in parentheses so appeared in the law as enacted.

Section 7 of S.L. 1999, ch. 114 declared an emergency. Approved March 18, 1999.

Effective Dates.

Section 12 of S.L. 1998, ch. 37 declared an emergency. Approved March 17, 1998.

62-610C. Universal service. — (1) Universal service is an evolving level of telecommunication services to which consumers in all regions of the state should have access.

(2) The commission shall review the level of telecommunication services within the state on a periodic basis and designate those service(s) which should be made available to consumers by eligible telecommunications carriers to meet their obligation to provide universal service. The commission shall, if services in addition to basic local exchange service are to be designated, consider the extent to which such other telecommunication services:

- (a) Have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;
- (b) Are being deployed in public telecommunications networks by telecommunications carriers; and
- (c) Are consistent with the public interest, convenience and necessity.
- (d) The commission shall also consider definitions of universal service adopted by the federal communications commission pursuant to the telecommunications act of 1996.

History.

I.C., § 62-610C, as added by 1998, ch. 37,
§ 4, p. 157.

STATUTORY NOTES

Federal References.

The federal telecommunications act of 1996 referred to in paragraph (2)(d) of this section is compiled as 15 U.S.C.S. §§ 18, 5714; 18 U.S.C.S §§ 1462, 1465, 2422; 47 U.S.C.S. §§ 151, 153 to 155, 160, 161, 204, 208, 214 220 to 225, 228, 230, 251 to 261, 271 to 276, 302a, 303, 305, 307 to 310, 312, 319, 330, 332, 336, 360, 363, 382, 385, 402, 522, 531 to 534, 537, 541 to 544A, 548, 549, 552, 556, 557, 559 to 561, 571 to 573, 605, 613, 614.

Compiler's Notes.

The letter "s" enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 12 of S.L. 1998, ch. 37 declared an emergency. Approved March 17, 1998.

62-610D. Eligible telecommunications carriers. — (1) Only a telecommunications carrier designated as an eligible telecommunications carrier by the commission shall be eligible to receive universal service fund support.

(2) The commission shall upon its own motion or upon request designate a telecommunications carrier that meets the requirements of subsection (3) of this section as an eligible telecommunications carrier for a service area

designated by the commission. Upon request and consistent with the public interest, convenience and necessity, the commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one (1) telecommunications carrier as an eligible telecommunications carrier for a service area designated by the commission, so long as the requesting telecommunications carrier meets the requirements set forth in this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the commission shall find that the designation is in the public interest.

(3) A telecommunications carrier requesting designation as an eligible telecommunications carrier shall, throughout the service area for which the designation is made:

(a) Offer the services which are within the definition of universal service adopted by the commission, using its own facilities or a combination of its own facilities and resale of another telecommunications carrier's services (including the services offered by another eligible telecommunications carrier); and

(b) Advertise the availability of such services and the charges therefor using media of general distribution.

(c) For the purpose of being eligible to receive support from the fund, the eligible telecommunications carrier shall also offer low-income telecommunication services pursuant to chapter 9, title 56, Idaho Code.

(4) The commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one (1) eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one (1) eligible telecommunications carrier shall give no less than thirty (30) days notice to the commission of its intent to relinquish such designation. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one (1) eligible telecommunications carrier, the commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served.

History.

I.C., § 62-610D, as added by 1998, ch. 37,
§ 5, p. 157.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 12 of S.L. 1998, ch. 37 declared an emergency. Approved March 17, 1998.

62-610E. Designating service and support areas. — The commission shall designate geographic service areas for the purpose of determining universal service obligations of eligible telecommunications carriers. The commission shall also designate geographic support areas for the purpose of

determining areas for which financial assistance shall be made available from the fund to assist eligible telecommunications carriers to meet universal service obligations.

History.

I.C., § 62-610E, as added by 1998, ch. 37,
§ 6, p. 157.

STATUTORY NOTES

Effective Dates.

Section 12 of S.L. 1998, ch. 37 declared an emergency. Approved March 17, 1998.

62-610F. High-cost support — Administration — Transition. —

(1) The commission shall establish a universal service fund to enable eligible telecommunications carriers to make universal service widely available to all persons within the state of Idaho at reasonable rates. Eligible telecommunication carriers receiving financial support shall use that support only for the provision, maintenance and upgrading of services and facilities for which the support is intended.

(2) The commission shall initiate a proceeding to determine and adopt the appropriate methodology and mechanisms to collect and distribute financial assistance which are specific, predictable and sufficient in conjunction with federal universal service support mechanisms to preserve and advance universal service within the state of Idaho. Revenue for the fund shall be collected through a uniform universal service fund surcharge as calculated by the commission. The surcharge shall be imposed on end users of all retail telecommunication services originating and terminating within the state of Idaho and collected by the telecommunications carrier providing telecommunication services to such end user. Disbursements from the fund shall be used to defray the costs, as determined by the commission, of providing universal service to customers within a geographic support area. Those costs shall be calculated using a forward-looking cost methodology. When providing disbursements from the fund, the commission shall take such actions as may be necessary to prevent redundant cost recovery by recipients of such funds including the reduction of access charges subject to title 61 or 62, Idaho Code.

(3) The commission shall establish procedures to administer the universal service fund and shall contract with a neutral third party for administration of the fund. The administrator shall perform the duties required by the commission including data gathering, collecting the surcharge revenues, disbursing funds, and notifying the commission of any fund violations.

(4) The commission shall develop procedures and provide for a transition period to begin no earlier than January 1, 2001, for rural telephone companies to replace funding available pursuant to section 62-610, Idaho Code, with the funding mechanism established pursuant to this section for the support of universal service.

History.

I.C., § 62-610F, as added by 1998, ch. 37, § 7, p. 157; am. 1999, ch. 114, § 5, p. 341; am. 2000, ch. 158, § 1, p. 400.

STATUTORY NOTES**Effective Dates.**

Section 12 of S.L. 1998, ch. 37 declared an emergency. Approved March 17, 1998. Section 2 of S.L. 2000, ch. 158 declared an emergency. Approved April 3, 2000.

Section 7 of S.L. 1999, ch. 114 declared an emergency. Approved March 18, 1999.

62-611. Regulatory fees. — Telephone corporations whose services are subject to the provisions of this chapter, shall pay to the commission a special regulatory fee to be determined by the commission, pursuant to procedures set forth in chapter 10, title 61, Idaho Code, in such amount as may be necessary to defray the amount to be expended by the commission for expenses in supervising and regulating telephone corporations pursuant to this chapter.

History.

I.C., § 62-611, as added by 1988, ch. 195, § 1, p. 358.

STATUTORY NOTES**Prior Laws.**

Former § 62-611 was repealed. See Prior Laws, § 62-601.

62-612. Restriction on withdrawal or discontinuance of service. — (1) A telephone corporation subject to this chapter which provides basic local exchange or message telecommunication service, may not withdraw or otherwise discontinue such service to a local exchange area unless one or more alternative telephone corporations are furnishing the respective telecommunication service or equivalent service to the customers in such local exchange area at the time such service is withdrawn or otherwise discontinued.

(2) A telephone corporation proposing to withdraw or otherwise discontinue the services set forth in subsection (1) of this section to a local exchange area shall file a notice of such withdrawal or discontinuance of service with the commission and shall publish a notice of such withdrawal in a legal newspaper circulated within the local exchange area, and provide such other reasonable notice as may be required by the commission.

(3) Any person or telephone corporation affected by a withdrawal or discontinuance of such services by a telephone corporation subject to this chapter, may within thirty (30) days from the date of publication of the notice apply to the commission to determine whether such withdrawal or discontinuance of service is authorized pursuant to this section.

History.

I.C., § 62-612, as added by 1988, ch. 195, § 1, p. 358.

STATUTORY NOTES

Prior Laws.

Former § 62-612 was repealed. See Prior Laws, § 62-601.

62-613. Subsidization of certain services not allowed. — A telephone corporation may not subsidize nonprice-regulated telecommunication services with those telecommunication services price-regulated by the commission pursuant to this chapter or to title 61, Idaho Code. The commission shall not require revenues earned from nonprice-regulated services or affiliates to be attributed to basic local exchange services, nor permit expenses incurred in producing the revenues to be attributed to the cost of providing basic local exchange services. Provided, payments to the universal service fund established by state or federal law shall not be considered to be a violation of this section.

History.

I.C., § 62-613, as added by 1988, ch. 195, § 1, p. 358; am. 1997, ch. 192, § 4, p. 539.

STATUTORY NOTES

Prior Laws.

Former § 62-613 was repealed. See Prior Laws, § 62-601.

62-614. Resolution of inter-telephone corporation disputes. — (1) If a telephone corporation providing basic local exchange service which has exercised the election provided in section 62-604(2)(a), Idaho Code, and any other telephone corporation subject to title 61, Idaho Code, or any mutual, nonprofit or cooperative telephone corporation, are unable to agree on any matter relating to telecommunication issues between such companies, then either telephone corporation may apply to the commission for determination of the matter.

(2) Upon receipt of the application, the commission shall have jurisdiction to conduct an investigation, and upon request of either party, to conduct a hearing and, based upon evidence presented to the commission, to issue its findings and order determining such dispute in accordance with applicable provisions of law and in a manner which shall best serve the public interest.

History.

I.C., § 62-614, as added by 1988, ch. 195, § 1, p. 358.

STATUTORY NOTES

Prior Laws.

Former § 62-614 was repealed. See Prior Laws, § 62-601.

62-615. Authority to implement the telecommunications act — Suspension of obligations of rural carriers — Promulgation of rules or procedures. — (1) The commission shall have full power and authority to implement the federal telecommunications act of 1996, including, but not limited to, the power to establish unbundled network element charges in accordance with the act.

(2) Upon petition of a rural telephone company with fewer than two percent (2%) of the nation's subscriber lines installed in the aggregate nationwide, the commission shall suspend the petitioner's obligations pursuant to section 251(c) of the telecommunications act of 1996. The period of suspension shall be determined by the commission, consistent with the public interest, convenience, and necessity, provided that such suspension shall be for a period of not less than three (3) years nor more than five (5) years. All other suspensions, modifications or exemptions pursuant to the telecommunications act of 1996 shall be committed to the commission's discretion.

(3) The commission may promulgate rules and/or procedures necessary to carry out the duties authorized or required by the federal telecommunications act of 1996.

History.

I.C., § 62-615, as added by 1997, ch. 192, § 6, p. 539.

STATUTORY NOTES

Prior Laws.

Former § 62-615, which comprised I.C., § 62-615, as added by 1988, ch. 195, § 1, p. 358, was repealed by S.L. 1997, ch. 192, § 5, effective July 1, 1997.

Federal References.

The federal telecommunications act of 1996 is compiled as 15 U.S.C.S. §§ 18, 5714; 18 U.S.C.S. §§ 1462, 1465, 2422; 47 U.S.C.S.

§§ 151, 153 to 155, 160, 161, 204, 208, 214 220 to 225, 228, 230, 251 to 261, 271 to 276, 302a, 303, 305, 307 to 310, 312, 319, 330, 332, 336, 360, 363, 382, 385, 402, 522, 531 to 534, 537, 541 to 544A, 548, 549, 552, 556, 557, 559 to 561, 571 to 573, 605, 613, 614.

Section 251(c) of the telecommunications act of 1996, referred to in subsection (2), is compiled as 47 U.S.C.S. § 251(c).

62-616. Commission authority to resolve subscriber complaints. — The commission shall have the authority to investigate and resolve complaints made by subscribers to telecommunication services which are subject to the provisions of this chapter which concern the quality and availability of local exchange service, or whether price and conditions of service are in conformance with filed tariffs or price lists, deposit requirements for such service or disconnection of such service by telephone corporations subject to the provisions of this chapter. The commission may, by order, render its decision granting or denying in whole or in part the subscriber's complaint or providing such other relief as is reasonable based on the evidence presented to the commission at the hearing. Any final order of the commission entered pursuant to this section may be enforced against any telephone corporation by an affected person or by the commission.

History.

I.C., § 62-616, as added by 1988, ch. 195,
§ 1, p. 358.

STATUTORY NOTES**Prior Laws.**

Former § 62-616 was repealed. See Prior
Laws, § 62-601.

JUDICIAL DECISIONS**Interest Rates.**

Idaho public utilities commission declined to impose a 12 percent interest rate that was sought by paging companies in an action seeking refunds for payment for facilities' use brought against a telephone company; the paging companies argued that the commis-

sion applied the wrong interest rate. The supreme court agreed because this section was not broad enough to allow the commission to create an interest rate or to apply the IDAPA 31.41.01.104.01. *Ryder v. Idaho PUC* (In re *Ryder*), 141 Idaho 918, 120 P.3d 736 (2005).

62-616A. Duty of telephone company to customers relating to unauthorized charges by a third-party service provider. — If a customer of a telephone corporation, whether subject to the provisions of this chapter or title 61, Idaho Code, notifies the telephone corporation that an unauthorized charge from a third-party service provider has been included on the telephone customer's bill by the telephone corporation, the telephone corporation shall remove the disputed charge from the bill and shall credit to the customer any amounts for unauthorized charges, whether paid or unpaid, that were billed by the telephone corporation on behalf of the third-party service provider during the period of six (6) months prior to the customer's notification to the telephone corporation that unauthorized charges from a third-party service provider have been included on the telephone corporation customer's bill. Nothing contained herein shall restrict the right of the telephone corporation to recover credited charges from the third-party service provider.

History.

I.C., § 62-616A, as added by 2005, ch. 200,
§ 4, p. 605.

62-617. Telephone corporation antitrust liability. — No action under the antitrust laws or any other provision or doctrine of law of the state of Idaho shall lie against a telephone corporation for providing service in compliance with any order of the commission. Provided however, this section shall not apply to the provision of any service for which the commission has approved or acknowledged an election pursuant to section 62-605(1), Idaho Code, except to the extent such service thereafter is the subject of a specific commission order pursuant to title 62, Idaho Code.

History.

I.C., § 62-617, as added by 1988, ch. 195,
§ 1, p. 358; am. 2005, ch. 200, § 5, p. 605.

STATUTORY NOTES

Prior Laws.

Former § 62-617 was repealed. See Prior Laws, § 62-601.

62-618. Preemption. — The provisions of this chapter preempt, eliminate, and prohibit any economic, franchise or licensing regulation of telephone corporations subject to this chapter by cities, counties, incorporated or unincorporated areas, special use districts, or any other local governmental entity, of any kind.

History.

I.C., § 62-618, as added by 1988, ch. 195, § 1, p. 358.

STATUTORY NOTES

Prior Laws.

Former § 62-618 was repealed. See Prior Laws, § 62-601.

RESEARCH REFERENCES

A.L.R. — Preemption of state or local law by Telecommunications Act of 1996 47 U.S.C.A. § 253. 195 A.L.R. Fed. 275.

62-619. Procedure before commission — Appeals. — (1) In all matters arising under this chapter, which are submitted to the commission for decision, order or review, procedure shall be governed by the commission's rules of practice and procedure.

(2) Reconsideration of, appeal from, and stay of orders issued pursuant to this chapter shall be governed by law as for orders of the commission in other matters.

History.

I.C., § 62-619, as added by 1988, ch. 195, § 1, p. 358.

STATUTORY NOTES

Prior Laws.

Former § 62-619 was repealed. See Prior Laws, § 62-601.

62-620. Civil penalty for violation. — Any telephone corporation who violates or fails to comply with any final order, decision, rule or regulation duly issued by the commission pursuant to this chapter shall be subject to a civil penalty of not to exceed two thousand dollars (\$2,000) for each day that the violation continues.

Actions to recover penalties under this act shall be brought in the name of the state of Idaho, in the district court in and for the county in which the cause of action or some part thereof arose, or in which the corporation

complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. Such action shall be commenced and prosecuted to final judgment by the attorney for the commission. In any such action, all penalties incurred up to the time of commencing the same may be sued for and recovered. In all such action, the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the state in any such action, together with the costs thereof, shall be paid into the state treasury to the credit of the general account [fund]. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

History.

I.C., § 62-620, as added by 1988, ch. 195,
§ 1, p. 358.

STATUTORY NOTES

Prior Laws.

Former § 62-620 was repealed. See Prior Laws, § 62-601.

Compiler's Notes.

The term "this act" refers to S.L. 1988, ch. 195, which is compiled as §§ 61-121, 61-622A,

62-601 to 62-607, 62-608, 62-609, 62-610, 62-611 to 62-614, 62-616, and 62-617 to 62-621.

The bracketed insertion in the second paragraph was added by the compiler to correct the name of the referenced fund. See § 67-1205.

62-621. Severability. — If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this chapter, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this chapter, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this chapter so adjudged to be invalid or unconstitutional.

History.

I.C., § 62-621, as added by 1988, ch. 195,
§ 1, p. 358.

STATUTORY NOTES

Prior Laws.

Former § 62-621 was repealed. See Prior Laws, § 62-601.

62-622. Regulation of basic local exchange rates, services and price lists. — (1) The commission shall regulate the prices for basic local exchange services for incumbent telephone corporations in accordance with the following provisions:

(a) At the request of the incumbent telephone corporation, the commission shall establish maximum just and reasonable rates for basic local exchange service. Maximum basic local exchange rates shall be sufficient to recover the costs incurred to provide the services. Costs shall include authorized depreciation, a reasonable portion of shared and common costs, and a reasonable profit. Authorized depreciation lives shall use

forward-looking competitive market lives. Authorized depreciation lives shall be applied prospectively and to undepreciated balances.

(b) At the request of the telephone corporation, the commission may find that existing rates for local services constitute the maximum rates.

(c) The commission shall issue its order establishing maximum rates no later than one hundred eighty (180) days after the filing of the request unless the telephone corporation consents to a longer period.

(d) An incumbent telephone corporation may charge prices lower than the maximum basic local exchange rates established by the commission. Provided however, upon the petition of a nonincumbent telephone corporation, the commission shall establish a minimum price for the incumbent telephone corporation's basic local exchange service if the commission finds, by a preponderance of the evidence, that the incumbent telephone corporation's prices for basic local exchange services in the local exchange area are below the incumbent telephone corporation's average variable cost of providing such services.

(e) After the commission has established maximum basic local exchange rates, an incumbent telephone corporation may change its tariffs or price lists reflecting the availability, price, terms and conditions for local exchange service effective not less than ten (10) days after filing with the commission and giving notice to affected customers. Changes to tariffs or price lists that are for nonrecurring services and that are quoted directly to the customer when an order for service is placed, or changes that result in price reductions or new service offerings, shall be effective immediately upon filing with the commission and no other notice shall be required.

(2) The commission shall not regulate the prices for basic local exchange services for telephone corporations that were not providing such local service on or before February 8, 1996. Provided however, such telephone corporation providing basic local exchange services shall file price lists with the commission that reflect the availability, price, terms and conditions for such services. Changes to such price lists shall be effective not less than ten (10) days after filing with the commission and giving notice to affected customers. Changes to price lists that are for nonrecurring services and that are quoted directly to the customer when an order for service is placed, or changes that result in price reductions or new service offerings, shall be effective immediately upon filing with the commission and no other notice shall be required. Notwithstanding the provisions of this subsection and subsection (1) of this section, telephone corporations that are subject to the provisions of this subsection shall not be required to file tariffs or price lists for basic local exchange services provided to business customers.

Upon written notice to the commission and to its business customers, and after posting the rates, terms and conditions of its services on the carrier's public website, a telephone corporation may withdraw any tariff or price list not required to be filed under the provisions of this section, provided:

(a) The carrier continues to maintain the rates, terms and conditions of its services on the company's public website;

(b) The commission maintains access to such terms and conditions on the telephone corporation's service; and

(c) Nothing in this section overrides the commission's existing authority pursuant to section 62-616, Idaho Code, to resolve customer complaints.

(3) The commission shall cease regulating basic local exchange rates in a local exchange calling area upon a showing by an incumbent telephone corporation that effective competition exists for basic local exchange service throughout the local exchange calling area. Effective competition exists throughout a local exchange calling area when either:

(a) Actual competition from a facilities-based competitor is present for both residential and small business basic local exchange customers; or

(b) There are functionally equivalent, competitively priced local services reasonably available to both residential and small business customers from a telephone corporation unaffiliated with the incumbent telephone corporation.

(4) Telephone corporations shall not resell:

(a) A telecommunications service that is available at retail only to a category of subscribers to a different category of subscribers;

(b) A means-tested service to ineligible customers; or

(c) A category of service to circumvent switched or special access charges.

(5) The commission shall determine the noneconomic regulatory requirements for all telephone corporations providing basic local exchange service or designated as an eligible telecommunications carrier pursuant to sections 62-610A through 62-610F, Idaho Code, including, but not limited to, such matters as service quality standards, provision of access to carriers providing message telecommunications service, filing of price lists, customer notice and customer relation rules.

History.

I.C., § 62-622, as added by 1997, ch. 192,

§ 8, p. 539; am. 1999, ch. 114, § 6, p. 341; am. 2011, ch. 312, § 2, p. 905.

STATUTORY NOTES

Prior Laws.

Former § 62-622 was repealed. See Prior Laws, § 62-601.

Another former § 62-622, which comprised I.C., § as added by 1988, ch. 195, § 1, p. 358, was repealed by S.L. 1997, ch. 192, § 7, effective July 1, 1997.

section (2), added the last sentence in the introductory paragraph and added the second paragraph in subsection (2).

Effective Dates.

Section 7 of S.L. 1999, ch. 114 declared an emergency. Approved March 18, 1999.

Amendments.

The 2011 amendment, by ch. 312, in sub-

62-622A. Commission authority to establish minimum pricing of basic local exchange service. — A telephone corporation may file a petition with the commission alleging that another telephone corporation, not subject to regulation pursuant to title 61, Idaho Code, is offering basic local exchange service to customers in a local exchange calling area at a price below its average variable cost of providing such service in the local exchange calling area. The commission shall, if after hearing it finds by a preponderance of the evidence that the allegations contained in the petition are true, establish a minimum price for basic local exchange service of the telephone corporation in the local exchange calling area, which minimum

price shall reflect the telephone corporation's average variable cost of providing such service.

History.

I.C., § 62-622A, as added by 2005, ch. 200,
§ 6, p. 605.

62-623. Subsidy reform — Universal service — Report to legislature. — The commission shall commence a proceeding to:

(1) Identify and quantify implicit subsidies within the rates of incumbent telephone corporations including, but not limited to:

- (a) Access charges paid by intrastate interexchange carriers to incumbent telephone corporations including all of the carrier common line charge;
- (b) Above cost rates paid by one (1) class of customers to reduce the price paid by another class of customers; and
- (c) Imputation of revenue from nonregulated telecommunications services.

(2) Determine a mechanism for removal of the subsidies from the rates of incumbent telephone corporations and the creation of explicit subsidy mechanisms.

(3) Determine revisions that may be necessary to section 62-610, Idaho Code, regarding universal service in order to comply with the telecommunications act of 1996 and regulations promulgated thereunder.

(4) On or before the first day of December 1997, the commission shall issue a report to the governor and the legislature recommending any necessary or desirable legislation concerning state and federal universal support mechanisms, the removal of implicit subsidies from rates and other telecommunication matters.

History.

I.C., § 62-623, as added by 1997, ch. 192,
§ 9, p. 539.

STATUTORY NOTES

Federal References.

The federal telecommunications act of 1996 referred to in subsection (3) of this section is compiled as 15 U.S.C.S. §§ 18, 5714; 18 U.S.C.S §§ 1462, 1465, 2422; 47 U.S.C.S. §§ 151, 153 to 155, 160, 161, 204, 208, 214

220 to 225, 228, 230, 251 to 261, 271 to 276, 302a, 303, 305, 307 to 310, 312, 319, 330, 332, 336, 360, 363, 382, 385, 402, 522, 531 to 534, 537, 541 to 544A, 548, 549, 552, 556, 557, 559 to 561, 571 to 573, 605, 613, 614.

62-624. Proceedings prior to enactment ratified. — Commission orders issued prior to approval of this act which relate to duties or authority granted to the commission by the telecommunications act of 1996 are hereby ratified and approved to the extent that such actions conform with the provisions of this chapter and the telecommunications act of 1996.

History.

I.C., § 62-624, as added by 1997, ch. 192,
§ 10, p. 539.

STATUTORY NOTES

Federal References.

The federal telecommunications act of 1996 referred to in this section is compiled as 15 U.S.C.S. §§ 18, 5714; 18 U.S.C.S §§ 1462, 1465, 2422; 47 U.S.C.S. §§ 151, 153 to 155, 160, 161, 204, 208, 214 220 to 225, 228, 230, 251 to 261, 271 to 276, 302a, 303, 305, 307 to 310, 312, 319, 330, 332, 336, 360, 363, 382, 385, 402, 522, 531 to 534, 537, 541 to 544A,

548, 549, 552, 556, 557, 559 to 561, 571 to 573, 605, 613, 614.

Compiler's Notes.

The term "this act" refers to S.L. 1997, ch. 192, which is codified as §§ 62-602, 62-603, 62-613, 62-615, 62-622, 661-622A, 2-623, and 62-624.

62-625 — 62-654. Uniform bills of lading act. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1915, ch. 16, §§ 22 to 56, p. 53; reen. C.L. 254:23 to 254:54; C.S., §§ 6087 to 6117; I.C.A.,

§§ 60-23 to 60-654, were repealed by S.L. 1967, ch. 161, § 10-102, effective at midnight on December 31, 1967. For present comparable provisions, see § 28-7-101 et seq.

CHAPTER 7

TELEGRAPH, TELEPHONE AND ELECTRIC POWER
CORPORATIONS

SECTION.

- 62-701. Right to use highways.
- 62-701A. Authority preserved.
- 62-702. Injury to company's property.
- 62-703. Penalty for malicious injury.
- 62-704. Transfer of rights and franchises.

SECTION.

- 62-705. Rights of way for electric power companies and the United States of America or any agency thereof.

62-701. Right to use highways. — Telephone corporations may construct or install telephone lines along, beneath the surface of or upon any public road or highway, or along, beneath the surface of, or across any of the waters or lands within this state, and may erect or install poles, posts, piers or abutments for supporting the insulators, wires and other necessary fixtures of their lines in such manner and at such points as not to incommode the public use of the road or highway, or interrupt the navigation of the waters.

History.

R.S., § 2700; reen. R.C. & C.L., § 2833;

C.S., § 4832; I.C.A., § 60-701; am. 1992, ch. 147, § 1, p. 442.

STATUTORY NOTES

Cross References.

Corporations have the right to construct and maintain lines of telegraph and telephone and connect the same with other lines, Idaho Const., Art. XI, § 13.

Eminent domain, electric power telephone, and telegraph, § 7-701 et seq.

Public Utilities Law, definition of telephone corporation, § 61-121.

JUDICIAL DECISIONS

ANALYSIS

Permissive use only.
Unused right of way.

Permissive Use Only.

Telegraph and telephone utilities have no permanent property right to use public highways for their facilities, but a permissive use only, and in any case where the utilities' facilities incommode the public use of a highway, the people, under the constitution and legislative enactment, reserve the right to require the utilities to relocate their facilities. *State ex rel. Rich v. Idaho Power Co.*, 81 Idaho 487, 346 P.2d 596 (1959).

Unused Right of Way.

Portion of the highway right of way not

used for actual road purposes was not forfeited to the owner of the fee title, and the telephone company had clear legal right to place and maintain their facilities upon the highway right of way. *Mountain States Tel. & Tel. Co. v. Kelly*, 93 Idaho 226, 459 P.2d 349 (1969), cert. denied, 297 U.S. 42, 90 S. Ct. 816, 25 L. Ed. 2d 44 (1970).

Cited in: *Oregon Short Line R.R. v. Postal Tel. Cable Co.*, 111 F. 842 (9th Cir. 1901); *Bentel v. County of Bannock*, 104 Idaho 130, 656 P.2d 1383 (1983).

RESEARCH REFERENCES

Am. Jur. — 74 Am. Jur. 2d, Telecommunications, §§ 10 to 12, 19.

C.J.S. — 86 C.J.S., Telecommunications, § 15 et seq.

62-701A. Authority preserved. — (1) As used in this section, "public rights-of-way" shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, leasehold interest, or similar property which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a telecommunications system.

(2) With respect to the installation of its facilities within public rights-of-way, the telecommunications provider shall at all times be subject to the authority of a city, county or highway district. No grant of authority pursuant to this section shall be deemed to waive other rights or requirements of the codes, ordinances or resolutions of a city, county or highway district regarding permits, reasonable fees to be paid, manner of construction, or the like, nor to grant any property interest in the public rights-of-way.

History.

I.C., § 62-701A, as added by 1997, ch. 385, § 1, p. 1240.

62-702. Injury to company's property. — Any person who injures or destroys, through want of proper care, any necessary or useful fixture of any telegraph or telephone corporation, is liable to the corporation for all damages sustained thereby.

History.

R.S., § 2701; reen. R.C. & C.L., § 2834; C.S., § 4833; I.C.A., § 60-702.

RESEARCH REFERENCES

Am. Jur. — 74 Am. Jur. 2d, Telecommunications, §§ 105, 106.

62-703. Penalty for malicious injury. — Any person who wilfully or maliciously does any injury to any telegraph or telephone property mentioned in the preceding section, is liable to the corporation for 100 times the amount of actual damages sustained thereby, to be recovered in any court of competent jurisdiction.

History.

R.S., § 2702; reen. R.C. & C.L., § 2835;
C.S., § 4834; I.C.A., § 60-703.

STATUTORY NOTES

Cross References.

Criminal liability for injuring telegraph or telephone property, § 18-6801.

62-704. Transfer of rights and franchises. — Any telegraph or telephone corporation may, at any time, with the consent of the persons holding two-thirds of the issued stock of the corporation, sell, lease, assign, transfer or convey any rights, privileges, franchises or property of the corporation, except its corporate franchise.

History.

R.S., § 2703; reen. R.C. & C.L., § 2836;
C.S., § 4834; I.C.A., § 60-704.

STATUTORY NOTES

Cross References.

Certificates of convenience and necessity,
§§ 61-526 to 61-529.

RESEARCH REFERENCES

Am. Jur. — 74 Am. Jur. 2d, Telecommunications, § 45.

62-705. Rights of way for electric power companies and the United States of America or any agency thereof. — Any person, company or corporation incorporated or that may hereinafter be incorporated under the laws of this state or of any state or territory of the United States, and doing business in this state, the United States of America or any agency thereof, for the purpose of supplying, transmitting, delivering or furnishing electric power or electric energy by wires, cables or any other method or means, shall have and is hereby given the right to erect, construct, maintain and operate all necessary lines upon, along and over any and all public roads, streets and highways, except within the limits of incorporated cities and towns and across the right of way of any railroad or

railroad corporation, together with poles, piers, arms, cross-arms, wires, supports, structures and fixtures for the purposes aforesaid, or either of them, in such manner and at such places as not to incommode the public use of the road, highway, street or railroad, or to interrupt the navigation of water, together with the right to erect, construct, maintain and operate upon said electric power line a telephone line to be used only in connection with the said electric energy and power line; provided, that the party exercising the right of way herein and hereby granted shall first apply to the board of county commissioners for permission to construct in the manner provided by law, and to acquire a right of way and, unless such party be the United States of America or an agency thereof, shall give to the county into or through which the right of way herein and hereby granted is exercised, a bond, with surety to be approved by the board of county commissioners, in the sum of \$5000, conditioned to hold the said county harmless from any and all liability on account of the erection, construction, maintenance or operation of the said electric line or lines: provided further, that nothing in this section shall be construed to mean the right to occupy public roads for any railroad or car line of any kind.

History.

1903, p. 343, § 1; reen. R.C. & C.L., § 2837; C.S., § 4836; I.C.A., § 60-705; am. 1945, ch. 37, § 1, p. 48.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1945, ch. 37 declared an emergency. Approved February 20, 1945.

JUDICIAL DECISIONS

ANALYSIS

Condemnation of property.

Permissive use only.

Scope of power.

Condemnation of Property.

An electric power cooperative holding a franchise from a highway district to use public ways for its poles and transmission lines could not be ousted from territory newly annexed to a city prior to condemnation of its property in such territory by the city. *Unity Light & Power Co. v. City of Burley*, 92 Idaho 499, 445 P.2d 720 (1968).

Permissive Use Only.

Electric power utilities have no permanent property right to use public highways for their facilities, but a permissive use only, and in any case where the utilities' facilities incommode the public use of a highway, the people, under the constitution and legislative

enactment, reserve the right to require the utilities to relocate their facilities. *State ex rel. Rich v. Idaho Power Co.*, 81 Idaho 487, 346 P.2d 596 (1959).

Scope of Power.

A county highway department's exclusive jurisdiction over its highways and rights-of-way does not extend to matters that do not involve its legitimate interests, including whether a benefitting utility may require a third party to reimburse the utility for some or all of the costs of relocation of facilities belonging to the utility within a public right-of-way. *Ada County Highway Dist. v. Idaho Pub. Utils.*, 151 Idaho 1, 253 P.3d 675 (2011).

RESEARCH REFERENCES

A.L.R. — Liability of electric power or light company to patron for interruption, failure, or inadequacy of service. 4 A.L.R.3d 594.
Liability of one other than electric power or light company or its employee for interruption, failure, or inadequacy of electric power. 15 A.L.R.4th 1148.

CHAPTER 8
TELEGRAPH AND TELEPHONE MESSAGES

SECTION. 62-801. Refusal to accept messages unlawful. 62-802. Telegraph offices must connect with telephone. 62-803. Messages must be wired when possible.	SECTION. 62-804. Law cumulative. 62-805. Penalty for violation.
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62-801. Refusal to accept messages unlawful. — It shall be unlawful for any telegraph or telephone company or any person in charge of such telegraph or telephone service, or operating or controlling any public telegraph or telephone system or office within this state, in whole or in part, or any employee thereof, to fail or refuse to accept and transmit to its final destination, promptly and by the most expeditious means of communication available between the place of receipt and destination thereof, any message or communication when the same shall be presented for transmission to any regular telegraph or telephone station upon any of its lines, and the regular and usual fees and charges paid, tendered or offered thereon: provided, that when any message or communication is offered which is couched, in whole or in part, in obscene or profane language, nothing in this chapter contained shall be so construed as to compel any telegraph or telephone company, or any person in charge of the same, to transmit such message or communication, and for the purpose of carrying out the provisions of this chapter.

History.
1911, ch. 222, part of § 1, p. 704; reen. C.L.
§ 2837a; C.S., § 4837; I.C.A., § 60-801.

STATUTORY NOTES

Cross References. Communications security, § 18-6701 et seq. Interchange of telephone and telegraph messages between companies, § 61-319.	Long and short distance telegraph and telephone service, § 61-323. Telephone corporation, definition, § 61-121.
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RESEARCH REFERENCES

Am. Jur. — 74 Am. Jur. 2d, Telecommunications, §§ 44, 54.
A.L.R. — Privacy, examination or disclosure of telegram as invasion of right of. 57 A.L.R.3d 16.
Eavesdropping as violating right of privacy. 11 A.L.R.3d 1296.
Criminal liability for furnishing telephone service facilitating betting on horse racing or other sports. 30 A.L.R.3d 1143.
Horse racing or other sports, right or duty to render or to refuse telegraph service that may facilitate betting on. 30 A.L.R.3d 1143.
Right of telephone or telegraph company to refuse, or discontinue, service because of use of improper language. 32 A.L.R.3d 1041.

62-802. Telegraph offices must connect with telephone. — All telegraph offices or stations from which messages are transmitted, or at which messages are received for transmission shall be equipped with proper telephone connections in order that messages and communications may be expeditiously transferred from telegraph to telephone lines or from telephone to telegraph lines when such transfer will accelerate the transmission of any such messages or communications: provided, that nothing herein is intended to require said telegraph companies or any one operating or controlling any telegraph system or office within this state to build a telephone line, it being intended to require such company to install a telephone in each of its offices where such telephone can be obtained by it, as it may be obtained by other business offices in the same vicinity.

History.

1911, ch. 222, part of § 1, p. 704; compiled and reen. C.L., § 2837b; C.S., § 4838; I.C.A., § 60-802.

RESEARCH REFERENCES

Am. Jur. — 74 Am. Jur. 2d, Telecommunications, §§ 55, 61, 64.

62-803. Messages must be wired when possible. — It is the purpose of this chapter, among other things, to require cooperation on the part of telegraph and telephone companies in the transmission of messages and communications to or from any place where the use of both means of communication is necessary or desirable and where such use will expedite the transmission of any such message or communication; and it shall be unlawful for any telegraph or telephone company or any person having charge of any public telegraph or telephone service or system, controlling or operating any such system within this state, in whole or in part, or any employee thereof, to transmit any message or communication upon which the fees and charges have been paid, tendered or offered, as herein provided, by mail, over any portion of the distance over which such message or communication is to be transmitted, unless neither telegraph nor telephone service is available, and then such means of transmission shall only be used for such distance as necessary in conveying such message to the nearest telegraph or telephone station.

History.

1911, ch. 222, § 2, p. 704; reen. C.L., § 2837c; C.S., § 4839; I.C.A., § 60-803.

62-804. Law cumulative. — This chapter shall be cumulative only, and is intended as affording additional remedy not now provided by law.

History.

1911, ch. 222, § 3, p. 704; compiled and reen. C.L., § 2837d; C.S., § 4840; I.C.A., § 60-804.

JUDICIAL DECISIONS

Company's Liability.

Telegraph company is public service corporation engaged in public utility, and in receiving, transmitting and delivering messages should be treated as an independent principal or contracting party, and be held liable in contract and tort, the same as other principals. *Strong v. Western Union Tel. Co.*, 18 Idaho 389, 109 P. 910 (1910).

The reasonableness or unreasonableness of rules and regulations made by a telegraph company must be determined with reference

to public policy, precisely as in the case of common carriers, and a stipulation which exempts such company from damages for its own negligence is void. *Strong v. Western Union Tel. Co.*, 18 Idaho 389, 109 P. 910 (1910).

Where a telegraph company fails to transmit a message correctly, the proof of the fact is prima facie evidence of the company's negligence. *Strong v. Western Union Tel. Co.*, 18 Idaho 389, 109 P. 910 (1910).

62-805. Penalty for violation. — Any telegraph or telephone company or person owning, controlling or operating any telegraph or telephone line or system within this state, in whole or in part, or any employee thereof, violating any of the provisions of this chapter, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not exceeding \$300.

History.

1911, ch. 222, § 4, p. 704; reen. C.L., § 2837e; C.S., § 4841; I.C.A., § 60-805.

RESEARCH REFERENCES

Am. Jur. — 74 Am. Jur. 2d, Telecommunications, §§ 115 to 117.

CHAPTER 9

GAS CORPORATIONS

SECTION.

62-901. Consent of municipality must be obtained.

62-902. Duty to furnish gas on application.

SECTION.

62-903. Applicant must defray expenses.

62-904. Right to inspect meters.

62-905. Discontinuance of supply.

62-901. Consent of municipality must be obtained. — No corporation hereafter formed must supply any city or town with gas, or lay down mains or pipes for that purpose in the streets or alleys thereof, without permission from the city or town authorities.

History.

R.S., § 2787; reen. R.C. & C.L., § 3401; C.S., § 4901; I.C.A., § 60-901.

STATUTORY NOTES

Cross References.

Duty to secure certificate of convenience and necessity from public utility commission, § 61-526.

Gas corporation, definition, § 61-117.

JUDICIAL DECISIONS

Cited in: *Splinter v. City of Nampa*, 70 Idaho 287, 215 P.2d 999 (1950).

62-902. Duty to furnish gas on application. — Upon the application in writing of the owner or occupant of any building or premises distant not more than 100 feet from any main of the corporation, and payment by the applicant of all money due from him, the corporation must supply gas as required for such building or premises, and cannot refuse on the ground of any indebtedness of any former owner or occupant thereof, unless the applicant has undertaken to pay the same. If, for the space of ten (10) days after such application, the corporation refuses or neglects to supply the gas required, it must pay to the applicant the sum of fifty dollars (\$50.00) as liquidated damages, and five dollars (\$5.00) a day as liquidated damages, for every day such refusal or neglect continues thereafter.

History.

R.S., § 2788; reen. R.C. & C.L., § 3042;
C.S., § 4902; I.C.A., § 60-902.

STATUTORY NOTES

Cross References.

Curtailment of electric or gas consumption during emergency, §§ 61-531 to 61-537.

RESEARCH REFERENCES

C.J.S. — 38A C.J.S., Gas, §§ 45 to 62. irrespective of who is the user. 19 A.L.R.3d
A.L.R. — Liability of premises, or their 1227.
owner or occupant, for gas or electric charges,

62-903. Applicant must defray expenses. — No corporation is required to lay a service pipe where serious obstacles exist to laying it, unless the applicant, if required, deposits in advance with the corporation, a sum of money sufficient to pay the cost of laying such service pipe, or his proportion thereof.

History.

R.S., § 2789; reen. R.C. & C.L., § 3043;
C.S., § 4903; I.C.A., § 60-903.

62-904. Right to inspect meters. — Any agent of a gas corporation, exhibiting written authority signed by the president or secretary thereof for such purpose, may enter any building or premises lighted with gas supplied by such corporation, to inspect the gas meters therein, to ascertain the quantity of gas supplied or consumed. Every owner or occupant of such buildings who hinders or prevents such entry or inspection must pay to the corporation the sum of fifty dollars (\$50.00) as liquidated damages.

History.

R.S., § 2790; reen. R.C. & C.L., § 3044;
C.S., § 4904; I.C.A., § 60-904.

RESEARCH REFERENCES

A.L.R. — Liability of owner or operator of premises for injury to meter reader or similar employee of public service corporation coming to premises in course of duties. 28 A.L.R.3d 1344.

62-905. Discontinuance of supply. — All gas corporations may shut off the supply of gas from any person who neglects or refuses to pay for the gas supplied, or the rent for any meter, pipes, or fittings provided by the corporation as required by his contract; and for the purpose of shutting off the gas in such case, any employee of the corporation may enter the building or premises of such person, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of any day, and remove therefrom any property of the corporation used in supplying gas.

History.

R.S., § 2791; reen. R.C. & C.L., § 3045;
C.S., § 4905; I.C.A., § 60-905.

CHAPTER 10**FRAUDULENT CONSUMPTION OF GAS****SECTION.**

62-1001. Tampering with gas meter or using gas not metered — Penalty.
62-1002. Search warrant upon suspected violation of preceding section.

SECTION.

62-1003. Right to civil action for damages not affected.

62-1001. Tampering with gas meter or using gas not metered — Penalty. — Any person, who, with intent to injure or defraud any company, corporation, copartnership or individual, authorized to manufacture, generate, sell or use illuminating or inflammable gas for lighting, heating or power purposes, shall injure, alter, obstruct or prevent the action of any meter, provided for the purpose of measuring the quantity of gas consumed by, or at, any burner, orifice or place, or supplied to any lamp, stove, range, furnace, machine, motor, appliance or contrivance, or who shall cause, or procure, or aid, the injuring or altering of any such meter or the obstruction or prevention of its action, or who shall make or cause to be made, with any pipe, tube, or any appliance, any connection, so as to conduct or supply illuminating or inflammable gas to any burner, or orifice, or lamp, or stove, or range or furnace, or motor, or other machine or appliance from which such gas may be consumed or utilized without passing through, or being registered by such meter, without the permission, consent, or acquiescence of the company, corporation, copartnership, or individual, furnishing or transmitting such gas, or who shall knowingly use or utilize any such gas which has not passed through the meter provided for the registration of the consumption thereof, or who shall by any means, device, appliance or

contrivance, knowingly use or utilize such gas for his own use, or for the use of another, with intent to evade payment thereof, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding three hundred dollars (\$300.00), or by imprisonment in the county jail for a term not exceeding six (6) months or by both such fine and imprisonment.

History.

1921, ch. 208, § 1, p. 418; I.C.A., § 60-1001.

62-1002. Search warrant upon suspected violation of preceding section. — Any such company, corporation, copartnership or individual, authorized to manufacture, generate, sell, or use illuminating or inflammable gas, who shall have probable cause to believe that any person, firm, company, copartnership or corporation is violating the provisions of this chapter, shall, upon making the affidavit required in, and complying with all the provisions of chapter 44 of title 19[, Idaho Code], be entitled to have a search warrant issued to it and served in the manner provided in said chapter 44 of title 19[, Idaho Code].

History.

1921, ch. 208, § 2, p. 418; I.C.A., § 60-1002.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertions were added by the

compiler to conform to the statutory citation style.

62-1003. Right to civil action for damages not affected. — Nothing herein contained shall be deemed to affect the right of any company, corporation, copartnership, firm or individual, to recover by civil action, in any court of competent jurisdiction the reasonable value of such gas used, or damages for any injury done by such unlawful acts.

History.

1921, ch. 208, § 3, p. 418; I.C.A., § 60-1003.

CHAPTER 11

RIGHTS OF WAY FOR OIL AND GAS PIPELINES

SECTION.

62-1101. Grant of authority.

62-1102. Conditions precedent to exercise of right of way.

SECTION.

62-1103. Limitation and construction of chapter.

62-1101. Grant of authority. — Any person, company or corporation incorporated or that may hereafter be incorporated under the laws of this state or of any state or territory of the United States, and doing business in this state, for the purpose of owning, controlling or operating any pipeline for the transmission, delivery, furnishing, or distribution of natural, or manufactured, gas for light, heat, or power, or of owning, controlling and

operating any pipeline for the transportation, distribution or delivery of crude petroleum, petroleum products, or of owning, controlling and operating any pipeline as defined by section 61-114, Idaho Code, shall have, and is hereby given, the right to construct, maintain, and operate such pipeline upon, along, and over, or under, any and all public roads, streets, and highways, except within the limits of incorporated municipalities, and across the right of way of any railroad, or railroad corporation, together with the necessary fixtures and appliances and other personal property, including telephone, telegraph and power lines, necessarily incident or appurtenant to the construction, operation, maintenance or management of such pipeline, in such manner and at such places as not to incommode the public use of the road, street, highway, or railroad, or to interrupt the navigation of water.

History.

1931, ch. 30, § 1, p. 58; I.C.A., § 60-1101;
am. 1951, ch. 57, § 1, p. 83.

STATUTORY NOTES**Cross References.**

Violations concerning pipelines, civil penalty, §§ 61-712A, 61-712B.

JUDICIAL DECISIONS

Cited in: *Bentel v. County of Bannock*, 104 Idaho 130, 656 P.2d 1383 (1983).

RESEARCH REFERENCES

Am. Jur. — 61 Am. Jur. 2d, Pipelines, §§ 21 to 41.

62-1102. Conditions precedent to exercise of right of way. —
Before exercising the right of way herein and hereby granted, such person, company or corporation shall first apply to the board of county commissioners of the county within which said pipeline, or any part thereof, is located, or to be located, for permission to construct in the manner provided by law, and to acquire a right of way; and such board of county commissioners shall grant such permission and give such right of way upon the condition that the traffic upon such public roads, streets, and highways be as little as possible interfered with, and that such road or highway be promptly restored to its former condition of usefulness, and the restoration thereof be subject also to the supervision of the county commissioners of the county in which said road, street, or highway is situated. And the exercise of the privileges herein conferred shall be subject to the condition that the county shall be compensated for any damage done to such public road, street or highway, and shall be held harmless from any and all liability on account of the laying, construction, maintaining or operating of said pipeline, telegraph, telephone or power line.

History.

1913, ch. 30, § 2, p. 58; I.C.A., § 60-1102;
am. 1951, ch. 57, § 2, p. 83.

62-1103. Limitation and construction of chapter. — Nothing herein shall be construed to grant the right to occupy public roads for any railroad or car line of any kind. Nothing herein shall be construed as denying to any incorporated municipality the power and right to grant rights similar to those expressed in section 62-1101[, Idaho Code,] within the limits of such municipalities as to the public roads, streets, highways and public places and railroad rights of way within said municipalities; and any such municipality may grant any such right of way within its limits to any such person, company or corporation.

History.

1931, ch. 30, § 3, p. 58; I.C.A., § 60-1103.

STATUTORY NOTES**Compiler's Notes.**

The bracketed insertion was added by the

compiler to conform to the statutory citation style.

CHAPTER 12**FENCES ALONG RAILROADS****SECTION.**

- 62-1201. Public utilities commission may require fence along railroads.
62-1202. Authority exercised upon verified application.
62-1203. Contents of application.

SECTION.

- 62-1204. Notice of hearing.
62-1205. Determination of necessity — Time allowance for construction.
62-1206. Modification or revocation of orders.
62-1207. Penalty for violation of order.

62-1201. Public utilities commission may require fence along railroads. — The public utilities commission shall have the jurisdiction and authority to require every railroad company or corporation operating any steam or electric railroad in this state to erect and maintain lawful fences on each or either side of such railroad where such railroad is not now required by law to erect and maintain fences, at such places as the public utilities commission shall determine such fences to be necessary to protect cattle, horses or mules or any other domestic animal being ranged or grazed upon land adjacent to such railroad from being wounded, maimed or killed by the operation or management of engines, cars or other rolling stock upon or over such railroad, with necessary openings and gates in such fences, and crossings and cattle guards for such openings and gates.

History.

1945, ch. 143, § 1, p. 213.

STATUTORY NOTES

Cross References.

Requirements for erection and maintenance of fences by railroads, § 62-406.

RESEARCH REFERENCES

Am. Jur. — 65 Am. Jur. 2d, Railroads, §§ 80 to 88.

C.J.S. — 74 C.J.S., Railroads, §§ 392 to 398.

62-1202. Authority exercised upon verified application. — Such jurisdiction and authority shall be exercised in each instance only when verified application shall be filed with such commission by not less than fifteen (15) persons owning cattle, horses or mules with the right to range or graze the same upon the lands adjacent to the portion of the railroad sought to be fenced.

History.

1945, ch. 143, § 2, p. 213.

62-1203. Contents of application. — Such application shall set forth sufficient description of such lands to identify the same, and the name and address of the owner or owners of such lands, and if any such lands are lands of the United States or the state of Idaho shall designate the agency or department of government administering such lands, and shall also set forth the nature of the right of each petitioner to range or graze cattle, horses, mules or other domestic animals thereon. Such application shall also specify the ownership of the railroad sought to be fenced.

History.

1945, ch. 143, § 3, p. 213.

62-1204. Notice of hearing. — Upon the filing of such application notice thereof and of any hearing by the commission thereon shall be given by mail by the commission to the owner or owners of such lands and if any such land is land of the United States or the state of Idaho, to the agency or department of government administering such land, and to the railroad company or corporation owning or operating the railroad and such owners, agency or department and such railroad shall have the right to protest the granting of such application and be heard thereon.

History.

1945, ch. 243, § 4, p. 213.

62-1205. Determination of necessity — Time allowance for construction. — Upon such hearing the public utilities commission shall determine whether or not any fence or fences shall be necessary to protect cattle, horses or mules or any other domestic animals being ranged or grazed upon the land designated in such application, from being wounded, maimed or killed by the operation or management of engines, cars or other rolling stock upon such railroad and may then order that fence or fences be

constructed and maintained by the railroad company or corporation at such place or places along such railroad adjacent to the lands designated in such petition as the commission in its discretion shall determine and may fix the time within which such fence or fences shall be constructed and may designate the place or places for necessary openings and gates therein and crossings and cattle guards in connection therewith.

History.

1945, ch. 143, § 5, p. 213.

62-1206. Modification or revocation of orders. — Such commission shall also have the jurisdiction and authority to modify or revoke any such order when upon its determination the necessity for any such fence shall cease to exist.

History.

1945, ch. 143, § 6, p. 213.

62-1207. Penalty for violation of order. — The failure of any railroad company or corporation to comply with any order of the commission authorized by this act shall not subject such noncomplying railroad company or corporation, or any of its officers, agents or employees, to any of the penalties prescribed in sections 61-706 to 61-709[, Idaho Code], both inclusive, but shall subject such company or corporation to the liability prescribed by section 61-702 of the Idaho Code.

History.

1945, ch. 143, § 7, p. 213.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1945, ch. 143 which is compiled as §§ 62-1201 to 62-1207.

The bracketed insertion was added by the compiler to conform to the statutory citation style.

CHAPTER 13

ELECTRICAL AND NATURAL AND MANUFACTURED GAS CONSUMPTION FROM PUMPING

SECTION.

62-1301. Legislative intent.

62-1302. Submission of pumping data by electric and gas suppliers.

62-1303. Adoption of procedures.

SECTION.

62-1304. Compensation to suppliers.

62-1305. Submission of data to Idaho department of water resources.

62-1301. Legislative intent. — The legislature of the state of Idaho recognizes that the issue of ground water depletion requires careful evaluation and study. Pertinent to such evaluation and study is the electric and natural and manufactured gas consumption of motors pumping water from wells.

History.

I.C., § 62-1301, as added by 1994, ch. 429,
§ 2, p. 1381.

62-1302. Submission of pumping data by electric and gas suppliers. — Upon receipt of a request from the Idaho department of water resources, filed in accordance with procedures of the Idaho public utilities commission, all suppliers of electric power, or natural or manufacturer [manufactured] gas, including those otherwise excepted under section 61-104, Idaho Code, shall submit an annual report after the close of the irrigation season. The report shall contain electric or gas consumption data for all accounts that are categorized as irrigation customers in geographic areas designated by the commission.

History.

I.C., § 62-1302, as added by 1994, ch. 429,
§ 2, p. 1381.

STATUTORY NOTES**Cross References.**

Department of water resources, § 42-1701
et seq.

compiler to supply the probable intended
term.

Compiler's Notes.

The bracketed insertion was added by the

62-1303. Adoption of procedures. — The Idaho public utilities commission, after notice and hearing pursuant to its rules of practice and procedure, shall promulgate rules that are necessary to implement the procedures for submission of electric and gas consumption reports. Such procedures shall provide that only the Idaho department of water resources may request electric and gas consumption data. In implementing such rules, the commission shall limit the submission of data to customer name, service location, customer account number, and power or gas consumption.

History.

I.C., § 62-1303, as added by 1994, ch. 429,
§ 2, p. 1381.

STATUTORY NOTES**Cross References.**

Department of water resources, § 42-1701
et seq.

62-1304. Compensation to suppliers. — Electric or gas suppliers that are required to submit consumption reports shall be entitled to claim reimbursement for the preparation of the required data, under procedures established by the commission. Reimbursement for the costs incurred in preparing and submitting the data will be paid by the Idaho department of water resources.

History.

I.C., § 62-1304, as added by 1994, ch. 429,
§ 2, p. 1381.

STATUTORY NOTES**Cross References.**

Department of water resources, § 42-1701
et seq.

62-1305. Submission of data to Idaho department of water resources. — As directed by the public utilities commission, electric and natural and manufactured gas suppliers shall forward consumption reports to the department of water resources in the manner prescribed by the commission rules.

History.

I.C., § 62-1305, as added by 1994, ch. 429,
§ 2, p. 1381.

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